IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE	§	
PETITION OF STEVEN A.	§	No. 230, 2014
MCLEOD FOR A WRIT	§	
OF PROHIBITION/MANDAMUS	§	

Submitted: May 27, 2014
Decided: June 25, 2014

Before **STRINE**, Chief Justice, **BERGER** and **RIDGELY**, Justices.

O R D E R

This 25th day of June 2014, upon consideration of the petition of Steven A. McLeod for an extraordinary writ of prohibition or writ of mandamus, it appears to the Court that:

(1) The petitioner, Steven A. McLeod, seeks to invoke the original jurisdiction of this Court, pursuant to Supreme Court Rule 43, to issue a writ of prohibition precluding the trial judge from presiding over a civil case filed by the petitioner in the Superior Court or a writ of mandamus disqualifying the trial judge from presiding over the Superior Court case. The defendant in the case below, Hughey F. McLeod, filed a response to Steven McLeod's petition and moved to dismiss the petition. After careful review, we find that Steven McLeod's petition manifestly fails to invoke this Court's original jurisdiction. Accordingly, the petition must be dismissed.

(2) This petition arises from a case currently pending in the Superior Court. In a motion filed on December 13, 2013, Steven McLeod asked the President Judge of the Superior Court to re-assign the case to another Superior Court judge under Superior Court Civil Rule 40(a). Steven McLeod claimed that re-assignment was necessary because the trial judge had not ruled on multiple motions he had filed. In a motion filed on April 15, 2014, Steven McLeod sought disqualification of the trial judge. Steven McLeod claimed that disqualification was necessary because, among other things, the trial judge had not ruled on pending motions, had entered orders with typographical errors, and did not send an order to his classification officer as requested, resulting in his inability to participate telephonically in a court hearing.[1]

(3) On April 17, 2014, the trial judge informed Steven McLeod that she had received his motion to disqualify and forwarded it to the President Judge because it was similar to the motion for re-assignment pending before the President Judge. The President Judge denied the motion for re-assignment on May 29, 2014.

(4) On May 5, 2014, Steven McLeod filed a petition in this Court for issuance of a writ of prohibition precluding the trial judge from presiding over his Superior Court case or a writ of mandamus disqualifying the trial judge. In his petition, Steven McLeod complains about the trial judge's handling of his case and

[1] Steven McLeod is incarcerated in Florida.

claims there has been a lack of judicial competence and impartiality. Hughey McLeod responded to the petition and moved to dismiss on the grounds that Steven McLeod failed to satisfy the threshold requirements for issuance of a writ of prohibition or a writ of mandamus. We agree.

(5) This Court "has original jurisdiction to issue a writ of prohibition not only to prevent a lower court from exceeding the limits of its jurisdiction, but to restrain an individual judge from proceeding in a case in which the judge is clearly disqualified by reason of personal interest, bias or prejudice."[2] A writ of prohibition is not a substitute for an appeal and will be denied if the petitioner has an adequate and complete remedy at law.[3] Steven McLeod has an adequate and complete remedy at law. There is a pending motion to disqualify and a decision on the motion to disqualify can be reviewed on a timely appeal.[4] Steven McLeod's motion for a writ of prohibition must therefore be dismissed.

(6) A writ of mandamus will only issue if the petitioner can show: (i) a clear right to the performance of a duty; (ii) that no other adequate remedy is available; and (iii) the Superior Court has arbitrarily failed or refused to perform its

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[2] *In re Witrock*, 649 A.2d 1053, 1054 (Del. 1994).

[3] *Id*.

[4] The trial judge, not the President Judge, must rule on the pending motion to disqualify. *Jones v. State*, 940 A.2d 1, 18 (Del. 2007) ("[W]hen confronted with a motion to recuse, the trial judge must engage in a two-step analysis to determine whether disqualification is appropriate.").

duty.[5] "[I]n the absence of a clear showing of an arbitrary refusal or failure to act, this Court will not issue a writ of mandamus to compel a trial court to perform a particular judicial function, to decide a matter in a particular way, or to dictate the control of its docket."[6] Steven McLeod has not satisfied any of the criteria for issuance of a writ of mandamus. The President Judge denied the motion for re-assignment, and the motion to disqualify filed on April 15, 2014 remains pending. Thus, Steven McLeod's petition for a writ of mandamus must be dismissed.

NOW, THEREFORE, IT IS ORDERED that the petition for the issuance of a writ of prohibition or a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[5] *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

[6] *Id.*