

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

|                         |   |                              |
|-------------------------|---|------------------------------|
| STATE OF OHIO, EX REL., | : | JUDGES:                      |
| BELINDA RIFE ANELLO     | : |                              |
|                         | : |                              |
| Relator                 | : | Hon. John W. Wise, P.J.      |
| -vs-                    | : | Hon. Julie A. Edwards, J.    |
|                         | : | Hon. Patricia A. Delaney, J. |
|                         | : |                              |
| JUDGE WEIGAND           | : |                              |
|                         | : |                              |
| Respondent              | : | CASE NO. 2008CA00205         |
|                         | : |                              |
|                         | : | <u>OPINION</u>               |

CHARACTER OF PROCEEDING: Petition for Writ of Mandamus

JUDGMENT: WRIT DENIED

DATE OF JUDGMENT ENTRY: November 24, 2008

APPEARANCES:

For Relator – pro se:

BELINDA RIFE ANELLO  
3204 Doubler Drive  
Akron, OH 44319

Wise, P.J.,

{¶1} Relator Belinda Rife Anello has filed a Petition for Writ of Mandamus requesting the issuance of a writ which would require the trial court to hold a hearing and issue findings of fact and conclusions of law relative to Relator's Motion for Relief from Judgment.

{¶2} To be entitled to the issuance of a writ of mandamus, relator must demonstrate: (1) a clear legal right to the relief prayed for; (2) a clear legal duty on the respondent's part to perform the act; and, (3) that there exists no plain and adequate remedy in the ordinary course of law. *State ex rel. Master v. Cleveland* (1996), 75 Ohio St.3d 23, 26-27, 661 N.E.2d 180; *State ex rel. Harris v. Rhodes* (1978), 5 Ohio St.2d 41, 324 N.E.2d 641, citing *State ex rel. National City Bank v. Bd. of Education* (1977), 520 Ohio St.2d 81, 369 N.E.2d 1200.

{¶3} Relator filed a motion with the trial court captioned "Motion for Relief from Judgment" premised upon on Civ.R. 60(B).

{¶4} "A request for relief pursuant to Civil Rule 60(B) is really a motion for post-conviction relief regardless of its caption." *State v. Brenton*, 3rd Dist. No. 11-06-06, 2007-Ohio-901, ¶15. In Relator's previous case, *State of Ohio ex rel. Belinda Rife Anello v. Judge Mary A. Falvey*, Case Number 2008CA0059, we noted "[M]unicipal courts lack jurisdiction to hear motions for post-conviction relief..."

{¶5} Because Relator has filed what is actually a motion for post-conviction relief, the trial court lacks jurisdiction to consider the motion. Consequently, there is no clear legal duty on the part of Respondent to perform the requested act.

{¶6} Relator has failed to demonstrate the elements necessary to warrant the issuance of the writ of mandamus.

{¶7} WRIT DENIED.

{¶8} COSTS TO RELATOR.

By: Wise, P.J.  
Edwards, J. and  
Delaney, J. concur

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HON. JOHN W. WISE

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HON. JULIE A. EDWARDS

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HON. PATRICIA A. DELANEY

