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IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

FILED  
COURT OF APPEALS  
FRANKLIN CO. OHIO  
2009 SEP 25 AM 10:16  
CLERK OF COURTS

State of Ohio, ex rel.,  
AEP Ohio et al, :

Relators, :

v. :

The Ohio Environmental Review  
Appeals Commission et al., :

Respondents. :

No. 09AP-839

(REGULAR CALENDAR)

JUDGMENT ENTRY

Relators filed this original action in mandamus seeking an order compelling respondent, Environmental Review Appeals Commission ("ERAC"), to vacate and reschedule the one hour de novo hearings that ERAC scheduled in an effort to comply with the deadlines imposed by Am.Sub.H.B. No. 1. On September 23, 2009, relators filed an unopposed motion for a preemptory writ of mandamus. At issue, therefore, is whether the writ should issue.

To be entitled to a writ of mandamus, relators must establish a clear legal right to the requested relief, a corresponding clear legal duty on the part of the respondents to provide the requested relief, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Couch v. Trimble Local School Dist. Bd. of Edn.*, 120 Ohio St. 3d 75, 2008-Ohio-4910, ¶12. Mandamus will not issue if there is a plain and adequate remedy in the ordinary course of law. *State ex rel. City of Lorain v. Stewart*, 119 Ohio St.3d 222, 2008-Ohio-4062.

In the instant matter, the parties filed a joint stipulation that conceivably satisfies the first two requirements of the analysis. Indeed, the clear legal right and clear

legal duty identified are uncontroversial – relators have a right to de novo hearings that comply with due process, and the commission has the duty to provide for such. As developed in this case's brief life, this has evolved into a still uncontroversial general conclusion – relators have a clear legal right to have meaningful hearings before the commission at which they are afforded a full opportunity to present any evidence relevant to the commission's review of their appeals, and the commission has the clear legal duty to provide such meaningful hearings.

Where the record is lacking, however, is the third requirement for the issuance of a writ. In their answers, respondents both raised the affirmative defense that relators have an adequate remedy at law, such that a writ should not issue. Nothing in the joint stipulation or unopposed motion addresses the adequacy of any other remedy at law; e.g., a declaratory judgment action seeking an interpretation that the deadlines imposed by the Am.Sub.H.B. No. 1 amendments to R.C. 3745.05(F) are directory and not mandatory, coupled with a claim for injunctive relief regarding the manner and timing by which the commission conducts its hearings. Despite the parties' consistent contention that this court must address this issue, we decline to issue such an advisory opinion.

Further, because relators have failed to demonstrate that there is no adequate remedy at law by stipulation, argument, or otherwise, we find that relators have failed to prove all the elements necessary for us to grant a writ of mandamus. As a result, we overrule relators' motion and deny the writ.

  
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Judge Lisa L. Sadler

  
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Judge John A. Connor