

HLD-164 (September 2008)

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-3486

IN RE: EARL A. PONDEXTER,
Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the Western District of Pennsylvania
(Related to 01-cv-2161)

Submitted Pursuant to Rule 21, Fed. R. App. P.
September 30, 2008
Before: SCIRICA, Chief Judge, WEIS and GARTH, Circuit Judges

(Opinion filed October 22, 2008)

OPINION

PER CURIAM.

Earl Pondexter filed this pro se mandamus petition pursuant to 28 U.S.C. § 1651, seeking an order reversing the District Court's order of dismissal and remanding the case for trial. For the foregoing reasons, we will deny the petition.

On November 15, 2001, Pondexter filed a lawsuit against the Department of Housing and Urban Development ("HUD") and the Allegheny County Housing Authority

(“ACHA”) in the United States District Court for the Western District of Pennsylvania. On June 6, 2002, the District Court granted HUD’s motion to dismiss, and ordered ACHA to answer. On September 13, 2006, the District Court granted ACHA leave to file a motion for summary judgment, which the District Court granted on September 4, 2007. Pondexter unsuccessfully sought reconsideration of that order and then appealed. His appeal is currently pending before this Court at C.A. No. 07-4431.

Mandamus is a drastic remedy that is available only in extraordinary circumstances. See In re Diet Drugs Prods Liab. Litig., 418 F.3d 372, 378 (3d Cir. 2005). It is not a substitute for an appeal. In re Chambers Dev. Co., 148 F.3d 214, 226 (3d Cir. 1998) (“[M]andamus is not a substitute for appeal and a writ of mandamus will not be granted if relief can be obtained by way of our appellate jurisdiction.”). As Pondexter’s appeal of the District Court’s orders is currently pending before this Court, he has not demonstrated that he is entitled to mandamus relief. According, we will deny his mandamus petition.