

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF AMIR FATIR § No. 73, 2008
FOR A WRIT OF MANDAMUS §

Submitted: February 28, 2008
Decided: May 13, 2008

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 13th day of May 2008, it appears to the Court that:

(1) The petitioner, Amir Fatir, seeks to invoke this Court’s original jurisdiction to issue an extraordinary writ of mandamus to compel the Superior Court Prothonotary to docket his civil complaint. The State has filed an answer to the petition. We conclude that the petition manifestly fails to invoke the Court’s jurisdiction.¹

(2) This Court has authority to issue a writ of mandamus only when the petitioner can demonstrate a clear right to the performance of a duty, no other adequate remedy is available, and the trial court arbitrarily failed or refused to perform its duty.² A petitioner who has an adequate remedy in the

¹ See Del. Const. art. IV, § 11(6) (2007) (defining Court’s original jurisdiction to issue extraordinary writs); Del. Supr. Ct. R. 43 (governing exercise of Court’s original jurisdiction over proceedings involving certain extraordinary writs).

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

appellate process may not use the extraordinary writ process as a substitute for a properly filed appeal.³

(3) In this case, Fatir cannot demonstrate that the Superior Court arbitrarily failed or refused to perform a duty owed to him. The Superior Court docket reflects that Fatir's complaint was docketed by the Prothonotary on May 31, 2007 and was subsequently dismissed by the Superior Court on July 10, 2007.⁴ Fatir did not file an appeal from the Superior Court's July 10, 2007 order. This Court will not allow Fatir to invoke the extraordinary writ process as a substitute for appellate review.

NOW THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(c), that the petition for a writ of mandamus is DISMISSED.⁵

BY THE COURT:

/s/ Jack B. Jacobs
Justice

³ *Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

⁴ *Fatir v. McNally*, Del. Super., C.A. No. 07C-05-355, Jurden, J. (July 10, 2007).

⁵ See Del. Supr. Ct. R. 29(c) (providing for dismissal, *sua sponte*, when petition fails to invoke jurisdiction of Court and Court concludes that notice of dismissal would serve no meaningful purpose).