

STATE OF MICHIGAN
COURT OF APPEALS

In Re KIRCHER.

DAVID KIRCHER,

Plaintiff,

v

WASHTENAW CIRCUIT COURT JUDGE,

Defendant,

and

CITY OF YPSILANTI,

Intervenor.

UNPUBLISHED

March 9, 2006

No. 262153

Before: Zahra, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Plaintiff filed a complaint for a writ of superintending control asking this Court to direct the trial court to comply with its instructions set forth in *Ypsilanti Fire Marshall v Kircher*, unpublished per curiam opinion of the Court of Appeals, issued April 27, 2004 (Docket No. 242697). In that case, the Court remanded with instructions to more precisely define the duties of the receiver, inter alia. On June 3, 2005, this Court granted the complaint for superintending control. Because plaintiff has a pending appeal, we conclude the complaint for superintending control was improvidently granted. We dismiss plaintiff's complaint for the writ pursuant to MCR 3.302(D)(2).

In this action, plaintiff asserts that the trial court did not comply with the clear instructions set forth in this Court's prior opinion. For superintending control to lie, a plaintiff must establish that a defendant has failed to perform a clear legal duty and that the plaintiff is otherwise without an adequate legal remedy. MCR 3.302(B); *In re Recorder's Court Bar Ass'n v Wayne Circuit Court*, 443 Mich 110, 134; 503 NW2d 885 (1993); *Shepherd Montessori Center Milan v Ann Arbor Twp*, 259 Mich App 315, 347; 675 NW2d 271 (2003). The availability of a legal remedy by way of an appeal precludes this Court from exercising superintending control and requires that the complaint for superintending control be dismissed. MCR 3.302(D)(2);

Shepherd Montessori, supra at 347; *Choe v Flint Charter Twp*, 240 Mich App 662, 667; 615 NW2d 739 (2000). Plaintiff has the ability to appeal the trial court orders about which he complains and in fact appealed those orders in docket numbers 260970 and 260971, which remain pending in this Court. Therefore, this Court may not exercise superintending control in this matter and plaintiff's complaint is dismissed.

/s/ William B. Murphy

/s/ Janet T. Neff