

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-1242

In re: ALAN PITTS, d/b/a Northern Carolina Supported
Employment; SENECA NICHOLSON, d/b/a Northern Carolina
Supported Employment,

Petitioners.

On Petition for Writ of Mandamus. (5:10-cv-00135-FL)

Submitted: May 19, 2011

Decided: May 23, 2011

Before TRAXLER, Chief Judge, and AGEE and KEENAN, Circuit
Judges.

Petition denied by unpublished per curiam opinion.

Alan Pitts, Seneca Nicholson, Petitioners Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Alan Pitts and Seneca Nicholson petition for a writ of mandamus seeking the issuance of an "Order to Show Cause As to Why The Writ Should Not Issue to the Respondents" as well as an order staying the proceedings in their civil action in the district court, see N.C. Supported Emp't v. N.C. Dep't of Health & Human Servs., No. 5:10-cv-00135-FL (E.D.N.C.), and appeal No. 10-2426 in this court, pending the issuance of the record of the district court's proceedings.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); United States v. Moussaoui, 333 F.3d 509, 516-17 (4th Cir. 2003). Mandamus relief is available only when the petitioner has a clear right to the relief sought. In re First Fed. Sav. & Loan Ass'n, 860 F.2d 135, 138 (4th Cir. 1988). Mandamus may not be used as a substitute for appeal. In re Lockheed Martin Corp., 503 F.3d 351, 353 (4th Cir. 2007). Pitts and Nicholson seek to challenge the decisions of the district court and the magistrate judge in the action that is before this court in appeal No. 10-2426. Because mandamus is not a substitute for appeal, and because Pitts and Nicholson may challenge the district court's and the magistrate judge's rulings on appeal, the request for mandamus relief must fail.

Additionally, Pitts' and Nicholson's request for a stay has been mooted by the issuance of the electronic record of the district court's proceedings, which has been forwarded to this court for its consideration in appeal No. 10-2426. Accordingly, although we grant leave to proceed in forma pauperis, we deny Pitts' and Nicholson's petition. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED