

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio ex rel. William W. Bridge, III, :
Relator, :
v. : No. 09AP-414
Franklin County Court of Common Pleas : (REGULAR CALENDAR)
and The Honorable Richard S. Sheward, :
Judge, :
Respondents. :

D E C I S I O N

Rendered on June 24, 2010

William W. Bridge, III, pro se.

Ron O'Brien, Prosecuting Attorney, and *Patrick J. Piccininni*,
for respondents.

IN PROHIBITION
ON MOTION FOR SUMMARY JUDGMENT

SADLER, J.

{¶1} Relator, William W. Bridge, III ("relator"), commenced this original action requesting this court to issue a writ of prohibition ordering respondent, Judge Richard S. Sheward of the Franklin County Court of Common Pleas ("respondent"), to refrain from taking any further action in the case of *Speeds Elec. Serv., Inc. v. Nations Constr., LLC*

(Mar. 24, 2009), Franklin C.P. No. 07 CVH 07-9820. Respondent filed a motion to dismiss for failure to state a claim upon which relief could be granted or, in the alternative, motion for summary judgment.

{¶2} Pursuant to Civ.R. 53 and Section (M), Loc.R. 12 of the Tenth Appellate District, this matter was referred to a magistrate who considered the action on its merits and issued a decision, including findings of fact and conclusions of law, which is appended hereto. The magistrate concluded that relator had failed to demonstrate that he was entitled to a writ of prohibition. Thus, the magistrate recommended the court grant respondent's motion for summary judgment and dismiss relator's action.

{¶3} No objections have been filed to the magistrate's decision.

{¶4} After conducting an independent review, we note an error in the magistrate's decision at page 4 where the magistrate concludes that relator cannot meet the requirements for the issuance of a writ of mandamus, instead of a writ of prohibition, and we hereby modify the decision to reflect that relator cannot meet the requirements for the issuance of a writ of prohibition. Finding no error of law or other defect in the magistrate's decision, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law therein. In accordance with the magistrate's decision, the requested writ of prohibition is denied and this action is dismissed.

*Writ of prohibition denied;
action dismissed.*

BROWN and FRENCH, JJ., concur.

A P P E N D I X

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State of Ohio ex rel. William W. Bridge, III, :
 Relator, :
 v. : No. 09AP-414
 Franklin County Court of Common Pleas : (REGULAR CALENDAR)
 and The Honorable Richard S. Sheward, :
 Judge, :
 Respondents. :

M A G I S T R A T E ' S D E C I S I O N

Rendered on June 30, 2009

William W. Bridge, III, pro se.

Ron O'Brien, Prosecuting Attorney, and Patrick J. Piccininni,
 for respondents.

IN PROHIBITION
 ON MOTION FOR SUMMARY JUDGMENT

{¶5} Relator, William W. Bridge, III, has filed this original action requesting that this court issue a writ of prohibition ordering respondent, Judge Richard S. Sheward of the Franklin County Court of Common Pleas, to refrain from taking any further action in

the case *Speeds Elec. Serv., Inc. v. Nations Constr., LLC* (Mar. 24, 2009), Franklin C.P. No. 07 CVH 07-9820, Judgment Entry.

Findings of Fact:

{¶6} 1. The underlying common pleas court action involves a breach of contract that existed between the parties. Speeds Electric Service, Inc. ("Speeds") filed an action against Nations Construction, LLC ("Nations") in July 2007. Nations filed an answer and counterclaim to which Speeds filed a counterclaim bringing relator into the action.

{¶7} 2. Relator filed a motion to dismiss him as a party to the underlying breach of contract action.

{¶8} 3. A hearing was held before Judge Sheward on March 4, 2009. At that time, Judge Sheward denied relator's motion to dismiss and entered a default judgment against relator in the amount of \$5,745. Judge Sheward also ordered that a hearing be held to determine the amount of attorney fees and exemplary damages to be awarded. This judgment entry was filed March 24, 2009.

{¶9} 4. Thereafter, relator filed a notice of appeal from the March 24, 2009 judgment entry in this court.

{¶10} 5. On May 13, 2009, this court entered a journal entry of dismissal granting the motions of Speeds and Nations finding that relator's appeal was premature since the issue of damages had not yet been determined.

{¶11} 6. Prior to this court's dismissal of relator's appeal, relator filed his complaint for a writ of prohibition arguing that the trial court clearly and unambiguously lacks both subject matter and personal jurisdiction over him.

{¶12} 7. On May 27, 2009, respondent filed a motion to dismiss for failure to state a claim upon which relief could be granted or, in the alternative, motion for summary judgment.

{¶13} 8. Because respondent attached certified copies of various documents, the magistrate issued notice of summary judgment hearing so relator would have an opportunity to file any evidence which he deemed important for this court's resolution of respondent's motion for summary judgment.

{¶14} 9. Relator has not filed a response to respondent's motion.

{¶15} 10. The matter is currently before the magistrate.

Conclusions of Law:

{¶16} For the reasons that follow, it is this magistrate's conclusion that this court should grant respondent's motion for summary judgment and dismiss relator's prohibition action.

{¶17} A motion for summary judgment requires the moving party to set forth the legal and factual basis supporting the motion. To do so, the moving party must identify portions of the record which demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280. Accordingly, any party moving for summary judgment must satisfy a three-prong inquiry showing: (1) that there is no genuine issue as to any material facts; (2) that the parties are entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, which conclusion is adverse to the party against whom the motion for summary judgment is made. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64.

{¶18} A writ of prohibition is an extraordinary judicial writ, the purpose of which is to restrain inferior courts and tribunals from exceeding their jurisdiction. *State ex rel. Tubbs Jones v. Suster* (1998), 84 Ohio St.3d 70. A writ of prohibition is customarily granted with caution and restraint, and is issued only in cases of necessity arising from the inadequacy of other remedies. *Id.* In order to be entitled to a writ of prohibition, relator must establish that: (1) respondent is about to exercise judicial or quasi-judicial powers; (2) the exercise of the power is unauthorized by law; and (3) the denial of the writ will cause injury for which no other adequate remedy in the ordinary course of law exists. *State ex rel. Henry v. McMonagle* (2000), 87 Ohio St.3d 543.

{¶19} Relator cannot meet the requirements for the issuance of a writ of mandamus. First, although this court dismissed relator's appeal as premature because the trial court had not yet determined the issue of damages, relator has not demonstrated that respondent is about to hold the hearing. In fact, relator filed this prohibition action before this court dismissed his appeal. During the pendency of the appeal, the trial court lacked jurisdiction to proceed. In response to respondent's motion, relator had the opportunity to present evidence that respondent was preparing to hold a hearing; however, relator has failed to do so.

{¶20} Second, relator cannot demonstrate that respondent is about to exercise power which is unauthorized by law. In fact, respondent clearly has subject-matter jurisdiction over a claim for a breach of contract. Because respondent does not patently and unambiguously lack jurisdiction over the underlying action, relator cannot meet the second requirement for the issuance of a writ of mandamus. See *State ex rel. Tubbs Jones v. Suster* (1998), 84 Ohio St.3d 70.

{¶21} Third, as demonstrated by relator's premature appeal, relator possesses an adequate remedy at law by way of an appeal from the final judgment of the trial court. To the extent that relator argues that certain errors have taken place in the proceedings below, those errors can be addressed on appeal.

{¶22} Based on a review of the complaint, the documents attached thereto, as well as the evidence submitted by respondent, it is this magistrate's conclusion that relator has not demonstrated that he is entitled to a writ of prohibition. As such, this court should grant the summary judgment motion of respondent and relator's action should be dismissed.

/s/ Stephanie Bisca Brooks

STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).