

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO ex rel. DR. STEVEN E. WATTS, D.D.S., et al.,	:	PER CURIAM OPINION
	:	
Relators,	:	CASE NO. 2014-T-0104
	:	
- VS -	:	
	:	
JUDGE PAMELA A. RINTALA, JUDGE OF THE DOMESTIC RELATIONS DIVISION OF THE COURT OF COMMON PLEAS, TRUMBULL COUNTY, OHIO, et al.,	:	
	:	
Respondents.	:	

Original Action for Writ of Prohibition.

Judgment: Petition dismissed.

Ned C. Gold, Jr., Ford, Gold, Kovoov & Simon, Ltd., 8872 East Market Street, Warren, OH 44484 (For Relators).

Dennis Watkins, Trumbull County Prosecutor, and *William J. Danso*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Respondent Judge Pamela A. Rintala).

Matthew G. Vansuch, Harrington, Hoppe & Mitchell, Ltd., 108 Main Avenue, S.W., Suite #500, Warren, OH 44481 (For Respondents Michael J. McGee, Esq. and Elena A. Willoughby).

Nancy E. Yakubek, 524 North Park Avenue, Warren, OH 44481 (For Respondent Dr. John R. Willoughby).

TIMOTHY P. CANNON, P.J.

{¶1} Relators, Dr. Steven E. Watts D.D.S., and Steven Echols Watts, D.D.S., Inc., filed an original action in prohibition against respondents, Pamela A. Rintala, Judge of the Domestic Relations Division of the Court of Common Pleas, Trumbull County, Ohio, Michael J. McGee, Esq., Elena Willoughby and Dr. John R. Willoughby.

{¶2} Relators' petition emanates from an appeal to this court, *Willoughby v. Willoughby*, 11th Dist. Trumbull No. 2012-T-0095, 2014-Ohio-743, wherein we reversed and remanded the case to the Trumbull County Common Pleas Court, Domestic Relations Division, with instructions. Relators were third-party defendants in the underlying divorce action.

{¶3} Respondent, Judge Rintala, has filed a motion to dismiss this petition pursuant to Civ.R. 12(B)(6), asserting it fails to state a claim upon which relief can be granted. In addition, respondents Elena and McGee have filed a Civ.R. 12(B)(6) motion to dismiss both causes, and a motion for sanctions and attorney fees. Relators have filed a motion requesting this court to take judicial notice of various proceedings and filings, replies to the motions to dismiss, and a "supplement" to their petition for writ of prohibition.

{¶4} Specifically, relators' petition for a writ of prohibition sets forth two "causes." First, relators allege that respondent, the domestic relations judge to whom the case was remanded, is about to exercise jurisdiction over them contrary to the instruction from this court in *Willoughby, supra*. Relators have also named "necessary parties" to the petition: Elena Willoughby, the plaintiff in the divorce action who joined relators as third-party defendants, and Michael J. McGee, her attorney. Second,

relators request attorney fees and costs from respondent Elena and respondent McGee. Relators also seek an order from this court prohibiting respondents Elena and McGee to pursue any further action against relators related to matters addressed in *Willoughby*, *supra*, and the underlying domestic relations case.

{¶5} As the Ohio Supreme Court has recently reiterated in *State ex rel. McGinty v. Eighth Dist. Court of Appeals*, 142 Ohio St.3d 100, 2015-Ohio-937, ¶12, to be entitled to the requested writ of prohibition, relators must establish: “(1) the court of appeals is about to or has exercised judicial power, (2) the exercise of that power is unauthorized by law, and (3) either denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law, * * * or the lack of jurisdiction is patent and unambiguous, * * *.” (Citations omitted.)

{¶6} As previously noted, this court reversed and remanded *Willoughby*, *supra*. In the petition, relators argue that upon remand from this court to the lower court, respondent McGee, as counsel for Elena, argued that our opinion in *Willoughby*, had not really “vacated the trial court’s order against Watts and that the trial court should retain jurisdiction over Watts and the issues related to him with the possibility that a judgment could still be rendered against Watts for dissipation of marital assets.” Relators argue that instead of dismissing respondent McGee’s arguments, respondent Judge Rintala ordered counsel to file briefs on the matter.

{¶7} Relators claim respondent Judge Rintala does not have jurisdiction because the lower court is bound to follow this court’s opinion and judgment upon remand in *Willoughby*. Relators also claim to have no adequate remedy at law.

{¶8} Conversely, respondents argue that a writ of prohibition is inappropriate because the trial court has yet to rule on the merits of respondent Elena's arguments upon remand, and any claim regarding the trial court's exercise of jurisdiction is not ripe for review.

{¶9} The trial court in this case has not yet exercised judicial power as it affects relators. The trial court may be contemplating the exercise of judicial power by considering the arguments raised by respondents McGee and Elena. Although relators claim they have no adequate remedy at law, relators give no explanation as to why they would not be able to appeal any decision of the trial court that is inconsistent with this court's opinion in *Willoughby*, and instructions on remand. The delay and expense caused by an appeal does not render that appeal an inadequate remedy. *State ex rel. Lyons v. Zaleski*, 75 Ohio St.3d 623, 626, 665 N.E.2d 212 (1996) ("contentions that appeal from any subsequent adverse final judgment would be inadequate due to time and expense are without merit"), citing *Whitehall ex rel. Wolfe v. Ohio Civ. Rights Comm.*, 74 Ohio St.3d 120, 124, 656 N.E.2d 684 (1995), and *State ex rel. Gillivan v. Bd. of Tax Appeals*, 70 Ohio St.3d 196, 200, 638 N.E.2d 74 (1994). Relators have a remedy by way of appeal of the trial court's eventual decision.

{¶10} Furthermore, to be entitled to a writ of prohibition, relators must show that the domestic relations court patently and unambiguously lacks jurisdiction to decide the merits of the arguments presently being raised by respondents McGee and Elena in the trial court. In other words, if the trial court patently and unambiguously lacks jurisdiction *to consider arguments raised*, a writ should be issued.

{¶11} Moreover, our consideration is limited to the allegations set forth in the petition, and the exhibits properly incorporated in the body of the petition. *OBLH, LLC v. O'Brien*, 11th Dist. Trumbull No. 2013-T-0111, 2015-Ohio-1208, ¶8. As such, we deny relators' request to "take judicial notice of various proceedings and filings" to the extent those things were not incorporated into the petition.

{¶12} Based on the allegations in the petition, it is evident the domestic relations court has *jurisdiction* to consider the arguments presented by respondents McGee and Elena as set forth. The underlying matter is a domestic relations case that has been remanded to such court for further disposition in accord with our instructions upon remand. The trial court has jurisdiction to entertain virtually any argument raised by respondents McGee and Elena, and relators have every opportunity to raise the numerous arguments they have presented explaining why respondents McGee and Elena's arguments do not have merit. If the ruling in the case is adverse to relators, they have an adequate remedy at law by way of appeal.

{¶13} Petition dismissed.

{¶14} Respondents "request for sanctions and attorney fees by defendants Michael J. McGee and Elena A. Willoughby" is hereby denied.

{¶15} Relators request to "take judicial notice of various proceedings and filings" is also hereby denied.

TIMOTHY P. CANNON, P.J., DIANE V. GRENDALL, J., CYNTHIA WESTCOTT RICE, J., concur.