[Cite as *State ex rel. Edwards v. Tompkins*, 2011-Ohio-32.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO EX REL.
CHARLES T. EDWARDS, et al.

Relators

-vs-

MAGISTRATE THOMAS J. TOMPKINS, et al.

Respondents

JUDGES:
Hon. William B. Hoffman, P. J.
Hon. Sheila G. Farmer, J.
Hon. John W. Wise, J.

Case No. CT2010-0035

O P I N I O N

CHARACTER OF PROCEEDING: Writ of Prohibition and/or Writ of Mandamus

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: January 6, 2011

APPEARANCES:

For Relator Perry Cty. Broadcasting

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For Relator Charles T. Edwards

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For Respondent Cottrill

HON. KELLY J. COTTRILL
MUSKINGUM COUNTY COURT
OF COMMON PLEAS
401 Main Street
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For Respondent Thomkins

WALTER K. CHESS, JR.
ASSISTANT PROSECUTOR
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Wise, J.

{¶1} Relators are Charles Edwards ("Edwards") and the Perry County Broadcasting Company ("PCB"). Respondents are Muskingum County Court of Common Pleas Magistrate Thomas J. Tompkins and Judge Kelly J. Cottrill.

{¶2} Relators have filed a complaint requesting this Court issue a writ of prohibition and/or a writ of mandamus prohibiting Respondents from presiding over a divorce case filed in the Muskingum County Court of Common Pleas by the wife of Relator Edwards. Respondents have filed motions to dismiss arguing the case should be dismissed for failure to state a claim upon which relief could be granted because an adequate remedy at law exists.

{¶3} Both Relators are defendants in the divorce action filed in the Muskingum County Court of Common Pleas. Relator Charles Edwards has an ownership interest in Relator PCB. Respondents have found PCB's principal place of business to be in Muskingum County. Relators dispute this finding.

{¶4} "In order to be entitled to the requested extraordinary relief in prohibition, [relators] must establish that (1) [respondents] are exercising judicial or quasi-judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law. *State ex rel. Brown v. Butler Cty. Bd. of Elections,* 109 Ohio St.3d 63, 2006-Ohio-1292, 846 N.E.2d 8, ¶ 21." *State ex rel. Triplett v. Ross* (2006), 111 Ohio St.3d 231, 234, 855 N.E.2d 1174, 1178.

{¶5} "A writ of prohibition is '[a]n extraordinary writ issued by an appellate court to prevent a lower court from exceeding its jurisdiction.' Black's Law Dictionary (8th Ed.2004) 1248." *Id.* at 244.

{¶6} "To be entitled to [a writ of mandamus], relators must establish a clear legal right to the requested relief, a corresponding clear legal duty on the part of respondents to provide it, and the lack of an adequate remedy in the ordinary course of law. *State ex rel. Husted v. Brunner,* 123 Ohio St.3d 119, 2009-Ohio-4805, 914 N.E.2d 397, ¶ 11." *State ex rel. Ohio Liberty Council v. Brunner* (2010), 125 Ohio St.3d 315, 318, 928 N.E.2d 410, 414.

{¶7} "Neither mandamus nor prohibition will issue if the party seeking extraordinary relief has an adequate remedy in the ordinary course of law." *Dzina v. Celebrezze,* 108 Ohio St.3d 385, 2006-Ohio-1195, 843 N.E.2d 1202, ¶ 12. "In the absence of a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party contesting that jurisdiction has an adequate remedy by appeal. *State ex rel. Plant v. Cosgrove,* 119 Ohio St.3d 264, 2008-Ohio-3838, 893 N.E.2d 485, ¶ 5." *State ex rel. Mosier v. Fornof* (2010), 126 Ohio St.3d 47, 48, 930 N.E.2d 305, 306.

{¶8} Relators argue all of the parties to the divorce action live in Perry County, Ohio, therefore, venue is not proper in Muskingum County, Ohio. PCB has been named as a corporate defendant in the divorce. Respondents, in turn, argue venue is proper in Muskingum County since PCB's principal place of business is in Muskingum County. In response, Relators maintain PCB's principal place of business is in Perry County.

{¶9} The Ohio Supreme Court has addressed the issue of whether a writ should issue to challenge venue stating, "Extraordinary relief in mandamus or prohibition generally does not lie to challenge a decision on a motion to change venue because appeal following a final judgment provides an adequate legal remedy. *State ex rel. Lyons v. Zaleski* (1996), 75 Ohio St.3d 623, 625, 665 N.E.2d 212, 215." *State ex rel. Banc One Corp. v. Walker* (1999), 86 Ohio St.3d 169, 173, 712 N.E.2d 742, 746.

{¶10} The trial court engaged in an extensive analysis of venue finding PCB's principal place of business to be in Muskingum County. Civ.R. 3(B) governs venue. The first nine provisions of Civ.R. 3(B) are of equal status and any one may be a proper initial place of venue without preference or priority. *Morrison v. Steiner* (1972), 32 Ohio St.2d 86, 89. Civ.R. 3(B)(2) permits an action to be filed in a county where a defendant has its principal place of business.

{¶11} Relators rely on a decision of the Ohio Supreme Court in *State ex rel. Smith, Admr. v. Cuyahoga County Court of Common Pleas, et al.* (2005), 160 Ohio St.3d 151 in support of their position that mandamus and prohibition may lie to challenge venue where the adequate remedy at law does not provide relief that is complete, beneficial, and speedy. While we agree *State ex rel. Smith* does stand for this proposition, we find *State ex rel. Smith* to be distinguishable from the case at bar.

{¶12} In *State ex rel. Smith* two courts, Cuyahoga and Wayne County Courts of Common Pleas, were refusing to exercise jurisdiction over the case. The Supreme Court held, "Unless the writ issues, neither court will necessarily proceed to judgment in the case, and Smith will not have any appeal." *Id.* at 155. Cuyahoga County was the location where the original complaint was filed. The defendant in that action moved the

Cuyahoga County court to transfer venue to Wayne County because of the location of the witnesses and the fact that the cause of action arose in Wayne County. The case was filed in Cuyahoga County because it was the principal place of business of the defendant. The Cuyahoga County court agreed to transfer the cause to Wayne County, which the Supreme Court found to be based upon the doctrine of forum non conveniens. The Supreme Court held the transfer of the case from Cuyahoga County to Wayne County based upon the doctrine of forum non conveniens was improper because this doctrine does not apply to intrastate transfers. *Id.* at 154-155. The Wayne County court rejected the transfer finding Cuyahoga County was an appropriate choice for the venue, Cuyahoga County should keep the case. The Supreme Court agreed and ordered Cuyahoga County to accept the case and proceed to judgment. *Id.* at 155.

{¶13} In the instant case, we do not have a court or courts refusing to accept jurisdiction over an action. The trial court in this case has made a determination that venue is proper and has accepted jurisdiction over the case. Relator disputes this finding, which is an issue that can be addressed on direct appeal. Relator argues if the trial court is reversed on the issue of venue, Relator will have to endure the burden of a new trial. The Supreme Court has held the mere possibility of retrial does not warrant relief in mandamus. See *State ex rel. Banc One Corp. v. Walker* (1999), 86 Ohio St.3d 169, 173, 712 N.E.2d 742, 746, supra.

{¶14} For these reasons, we find Relators have an adequate remedy at law by way of a direct appeal following the issuance of a final, appealable order. Because an adequate remedy at law exists, neither prohibition nor mandamus can issue. Respondents' motions to dismiss are granted.

{¶15} MOTIONS TO DISMISS GRANTED.

{¶16} CAUSE DISMISSED.

{¶17} COSTS TO RELATORS.

{¶18} IT IS SO ORDERED.

By: Wise, J.

Hoffman, P. J., and

Farmer, J., concur.

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JUDGES

JWW/d 1220

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO EX REL. CHARLES T. EDWARDS, et al.	:	
Relators	:	
-vs-	:	JUDGMENT ENTRY
MAGISTRATE THOMAS J. TOMPKINS, Et al.	:	
Respondents	:	Case No. CT2010-0035

For the reasons stated in our accompanying Memorandum-Opinion, the complaint for a writ of prohibition and/or complaint for writ of mandamus are dismissed.

Costs assessed to Relators.

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JUDGES