

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State ex rel. Linda A. Dunbar

Court of Appeals No. L-14-1022

Relator

v.

Honorable Linda Jennings

DECISION AND JUDGMENT

Respondent

Decided: March 18, 2014

* * * * *

Barry E. Savage, for relator.

* * * * *

SINGER, J.

{¶ 1} This matter is before the court upon the complaint of relator, Linda A. Dunbar, for a writ of prohibition to prevent Judge Jennings from exercising jurisdiction in a pending proceeding on the ground that the court has exceeded its authority and disregarded the Ohio Rules of Civil Procedure.

{¶ 2} Relator is the widow of Harlton G. Dunbar, who died in December 2005. Relator was the primary beneficiary during her lifetime of an intervivos trust created by her husband. Their daughters were named as the remainder beneficiaries. KeyBank was

allegedly name as trustee. In December 2011, the alleged trustee advisor, Ronald Hamilton, advised that relator should not receive any additional distributions from the trust unless she complied with his request to provide information relator determined to be personal and confidential. In March 2012, relator exercised her right under the trust agreement, as the only “adult beneficiary currently receiving principal or income from the trust” to have the trustee advisor removed and replaced. Hamilton refused to step down as the trust advisor insisting that a majority of the current adult beneficiaries agree that Hamilton should remain as trustee advisor. Since this time, relator has not received any distributions from the trust.

{¶ 3} In July 2012, relator filed a complaint in the Lucas County Court of Common Pleas against Hamilton and the remainder beneficiaries, to which no answer was filed. She also moved for distributions from the trust to continue pending resolution of the dispute, an appointment of a receiver for the trust, a temporary injunction, and a motion to shorten the time for discovery. No responses were filed to relator’s discovery requests. The trial court refused to issue orders mandating that the defendants comply with relator’s requests for discovery. The court further prohibited relator from deposing the defendants.

{¶ 4} The court held one scheduling conference in which the court indicated that the first determination to be made was whether KeyBank would be added as a party and whether the provision under the trust agreement to replace the trust advisor would be enforceable. Following the submission of briefs on these two issues, the court determined on May 10, 2013, that the removal provision was not enforceable. The court

also dismissed relator's first, second, third, and sixth causes of action with prejudice. Relator's sixth cause of action sought to have Hamilton removed for breaching his fiduciary duties, rather than on the basis of her right of removal. The court did not rule on the fourth or fifth causes of action, which related to the production of records for attorney fees by the trust and trust advisor. Because the court found that these two claims remain pending, relator is unable to seek an appeal of the judgment dismissing her primary causes of action.

{¶ 5} The court also ordered the trust to pay the attorney fees incurred by the trustee and the defendant remainder beneficiaries in defending this action, estimated to be in excess of \$200,000, and charge them against relator's income. Relator asserts that neither she nor the court has ever seen an attorney billing. Furthermore, on July 8, 2013, Judge Jennings ordered that relator should pay her daughters' attorney fees as well.

{¶ 6} Judge Jennings further ordered the parties to attend a court-supervised settlement conference on July 30, 2013, despite the fact that there had not been a final pretrial in this case. Following that conference, the parties attempted to settle the lawsuit. When it was reported to the trial court on December 17, 2013, that the parties could not reach a settlement, Judge Jennings created a scheduling order, which relator argues, should have been undertaken in the early stages of the litigation. Relator argues that the scheduling order is so compressed she will have only two months to complete discovery.

{¶ 7} Because the trial court has not complied with Civ.R. 7 through 57, relator asserts that she has been unable to fairly litigate her claims.

{¶ 8} In order for a writ of prohibition to issue, relator must establish that:

“(1) that the court or officer against whom it is sought is about to exercise judicial or quasi-judicial power, (2) that the exercise of such power is unauthorized by law, and (3) that the refusal of the writ will result in injury for which no other adequate remedy exists.” *State ex rel. Fyffe v. Pierce*, 40 Ohio St.3d 8, 9, 531 N.E.2d 673 (1988), quoting *Commercial Savings Bank v. Court of Common Pleas*, 35 Ohio St.3d 192, 193, 519 N.E.2d 647 (1988). “Prohibition is a preventive rather than a corrective remedy and is designed to prevent a tribunal from proceeding in a matter which it is not authorized to hear and determine.” *State ex rel. Stefanick v. Municipal Court of Marietta*, 21 Ohio St.2d 102, 104, 255 N.E.2d 634 (1970). *Accord Kelley v. State ex rel. Gellner*, 94 Ohio St. 331, 114 N.E. 255 (1916), paragraph three of the syllabus.

{¶ 9} Furthermore, if a complaint for a writ of prohibition is “frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint” it can be dismissed sua sponte. *State ex rel. Jones v. Garfield*, 77 Ohio St.3d 447, 448, 674 N.E.2d 1381 (1997).

{¶ 10} Upon a review of the complaint, we find that relator does not assert a claim that the trial court acted outside its legal jurisdiction. The lower court has subject matter jurisdiction in this case and the court has personal jurisdiction over the parties. Relator’s sole claim is that the trial court has failed and continues to fail to adhere to the Ohio Rules of Civil Procedure in the course of determining this litigation. While such action could constitute error, such error does not affect the court’s jurisdictional authority. Therefore, relator’s complaint for a writ of prohibition is dismissed. Relator is ordered to pay the costs of this original action.

{¶ 11} Also before the court is relator's motion to stay the trial court proceedings. In light of our dismissal of the complaint for a writ of prohibition, this motion is denied. It is so ordered.

{¶ 12} **To the clerk: Manner of service.**

{¶ 13} The clerk is directed to serve upon all parties, within three days, a copy of this decision in a manner prescribed by Civ.R. 5(B).

Writ denied.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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