

[Cite as *State ex rel. Mickey v. Common Pleas Court*, 2004-Ohio-2691.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 84519

STATE OF OHIO, EX REL.,	:	ORIGINAL ACTION
AUDREY LEA MICKEY	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
COMMON PLEAS COURT, ET AL.	:	
	:	
Respondents	:	

DATE OF JOURNALIZATION: MAY 25, 2004

CHARACTER OF PROCEEDINGS: WRIT OF PROHIBITION

JUDGMENT: Writ Dismissed.
Order No. 359839

APPEARANCES:

For Relator: AUDREY L. MICKEY, PRO SE
4459 Edgerton Road
North Royalton, Oh 44133

For Respondent: John P.
Hildebrand: JOHN P. HILDEBRAND
Hildebrand, Williams & Farrell
21430 Lorain Road
Fairview Park, Ohio 44126

For Respondent: Christopher
Boyko: WILLIAM D. MASON, ESQ.
Cuyahoga County Prosecutor
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

For Respondent, Stana
Andjelkovic: JOHN P. HILDEBRAND

Hildebrand, Williams & Farrell
21430 Lorain Road
Fairview Park, Ohio 44126

MICHAEL J. CORRIGAN, A. J.

{¶1} On April 19, 2004, the petitioner, Audrey Mickey, commenced this prohibition action against the respondents, the Common Pleas Court of Cuyahoga County, Judge Christopher Boyko, Stana Andjelkovic and John Hildebrand. Mickey seeks to direct the respondents in the underlying case, *Mickey v. Mickey*, Cuyahoga County Common Pleas Court Case No. CV-441046, to stop delaying and to “proceed to direct intruders parties respondents to fully return the trusts (sic) personal property forthwith” or to direct the respondents to proceed to trial for damages to the trust. For the following reasons, this court dismisses the application for a writ of prohibition, sua sponte.

{¶2} In the underlying case, the docket reveals that in June 2001, Mickey commenced the underlying case against, inter alia, Stana Andjelkovic, to recover property of a trust or an estate. In June 2002, Judge Boyko dismissed the complaint for lack of subject matter jurisdiction. This became a final, appealable order when Stana Andjelkovic dismissed the counterclaim without prejudice on July 1, 2002. Since then Mickey has filed multiple motions and pleadings to revive the action or recover the property, but she never filed an appeal.

{¶3} The principles governing prohibition are well established. Its requisites are (1) the respondent against whom it is sought is about to exercise judicial power, (2) the exercise of such power is unauthorized by law, and (3) there is no adequate remedy at law. *State ex rel. Largent v. Fisher* (1989), 43 Ohio St.3d 160, 540 N.E.2d 239. Furthermore, if a petitioner had an adequate remedy, relief in prohibition is precluded, even if the

remedy was not used. *State ex rel. Leshner v. Kainrad* (1981), 65 Ohio St.2d 68, 417 N.E.2d 1382, certiorari denied (1981), 454 U.S. 845; cf. *State ex rel. Sibarco Corp. v. Berea* (1966), 7 Ohio St.2d 85, 218 N.E.2d 428, certiorari denied (1967), 386 U.S. 957. Furthermore, it should be used with great caution and not issue in a doubtful case. *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas* (1940), 137 Ohio St. 273, 28 N.E.2d 273; *Reiss v. Columbus Municipal Court* (App. 1956), 76 Ohio Law Abs. 141, 145 N.E.2d 447.

{¶4} In the present case, Mickey's proper remedy was appeal, and that precludes the issuance of an extraordinary writ, such as prohibition. Moreover, prohibition is to prevent a court from conducting further proceedings in a case, when it does not have jurisdiction over the matter. It is not issued to compel a judge to conduct further proceedings on a matter.

{¶5} Accordingly, this court dismisses this application for a writ of prohibition, sua sponte. Petitioner to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

PATRICIA A. BLACKMON and COLLEEN CONWAY COONEY, JJ., concur.