[Cite as *Bohnert v. Russo*, 2009-Ohio-5707.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94103

EDWARD G. BOHNERT

RELATOR

vs.

JUDGE NANCY M. RUSSO

RESPONDENT

JUDGMENT:
COMPLAINT DISMISSED

WRIT OF PROHIBITION

ORDER NO. 427579

RELEASE DATE: October 28, 2009

FOR RELATOR

Edward G. Bohnert
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ATTORNEYS FOR RESPONDENT

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MARY J. BOYLE, J.:

{¶ 1} On October 19, 2009, the petitioner, Edward Bohnert, commenced this prohibition action against the respondent, Judge Nancy M. Russo, to prevent the judge from conducting a contempt hearing in the underlying case, *Countrywide Home Loans, Inc. v. Sherri L. Ford, et al.,* Cuyahoga County Common Pleas Court Case No. CV-669207. For the following reasons, this court dismisses the application for a writ of prohibition sua sponte.

{¶ 2} The underlying case is a foreclosure action in which Countrywide obtained a judgment and order of foreclosure in January 2009. According to the docket on February 6, 2009, the trial court issued a journal entry scheduling

the sale of the property for March 16, 2009. However, there was no sale because of lack of bidders.

{¶ 3} On August 28, 2009, the judge ordered Countrywide by September 30, 2009, to provide the sheriff and the court with all the necessary documents to effect the sale of the property. The judge further warned Countrywide that the failure to comply with this order would result in a show cause order, and the judge specifically stated that she retained jurisdiction over all post-judgment motions. However, Countrywide did not comply with this order. Thus, on October 8, 2009, the judge scheduled a show cause hearing for October 20, 2009, and further ordered Edward Bohnert, Countrywide's attorney, to designate the Countrywide official who would represent the company at the hearing. On October 13, 2009, Bohnert made the requested filing; however, he did not designate the official who would be present at the hearing. Instead, he questioned the jurisdiction of the court to conduct the hearing and explained that Countrywide did not order the sale of the property because it was working on a possible loan modification agreement with Sherri Ford. (Paragraph 6 of the Complaint.) In response, on October 16, 2009, the judge scheduled a contempt hearing for Bohnert on October 20, 2009, for his failure to obey her October 8, 2009 order. Bohnert then commenced this prohibition action and moved to stay the contempt hearing.

{¶ 4} 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. Prohibition will not lie unless it clearly appears that the court has no jurisdiction of the cause which it is attempting to adjudicate or the court is about to exceed its jurisdiction. *State ex rel. Ellis v. McCabe* (1941), 138 Ohio St. 417, 35 N.E.2d 571, paragraph three of the syllabus. "The writ will not issue to prevent an erroneous judgment, or to serve the purpose of appeal, or to correct mistakes of the lower court in deciding questions within its jurisdiction." *State ex rel. Sparto v. Juvenile Court of Darke County* (1950), 153 Ohio St. 64, 65, 90 N.E.2d 598. 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, and *Reiss v. Columbus Municipal Court* (App. 1956), 76 Ohio Law Abs. 141, 145 N.E.2d 447. Nevertheless, when a court is patently and unambiguously without jurisdiction to act whatsoever, the availability or adequacy of a remedy is immaterial to the issuance of a writ of prohibition. *State ex rel. Tilford v. Crush* (1988), 39 Ohio St.3d 174, 529 N.E.2d 1245 and *State ex rel. Csank v. Jaffe* (1995), 107 Ohio App.3d 387, 668 N.E.2d 996. However, absent such a patent and unambiguous lack of jurisdiction, a court having general jurisdiction of the subject matter of an action has authority to determine its own jurisdiction. A party challenging the court's jurisdiction has an adequate remedy at law via

appeal from the court's holding that it has jurisdiction. *State ex rel. Rootstown Local School Dist. Bd. of Edn. v. Portage County Court of Common Pleas* (1997), 78 Ohio St.3d 489, 678 N.E.2d 1365 and *State ex rel. Bradford v. Trumbull Cty. Court*, 64 Ohio St.3d 502, 1992-Ohio-116, 597 N.E.2d 116. Moreover, the court has discretion in issuing the writ of prohibition. *State ex rel. Gilligan v. Hoddinott* (1973), 36 Ohio St.2d 127, 304 N.E.2d 382.

{¶ 5} In the present case Bohnert baldly asserts that the termination of jurisdiction principle deprives the respondent judge of jurisdiction over the underlying matter and that there is no Ohio authority that requires a judgment creditor to execute on its judgment. However, he cites no authority for these propositions. Specifically, he cites no controlling authority which holds that a court of common pleas judge lacks the jurisdiction or the authority to compel a plaintiff in a foreclosure action to initiate a sheriff's sale after the initial attempt to sell the property was unsuccessful. Given the failure to show such controlling authority, this court declines to issue relief in prohibition. Cf. *State ex rel. City of Westlake v. Judge Peter J. Corrigan,* Cuyahoga App. No. 86575, 2006-Ohio-3323.

{¶ 6} In contrast, R.C. 2329.51 and 2329.52 indicate that the respondent judge retains jurisdiction over the foreclosure when the property goes unsold for lack of bidders. Indeed, such foreclosure must proceed through the court. At the very least, this authority clothes the respondent judge with sufficient

jurisdiction to determine her own jurisdiction, and the aggrieved party would have an adequate remedy at law through appeal.[1]

{¶ 7} Generally, the possibility that a trial court may hold an individual in contempt and impose a sanction does not provide a basis for relief in prohibition. Rather, appeal from the judgment of contempt is an adequate remedy requiring denial of relief in prohibition. *State ex rel. Mason v. Burnside,* 117 Ohio St.3d 1, 2007-Ohio-6754, 881 N.E.2d 224, at ¶15.

{¶ 8} Additionally, Bohnert failed to support his complaint with an affidavit "specifying the details of the claim" as required by Local Rule 45(B)(1)(a). *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077 and *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899.

{¶ 9} Accordingly, this court sua sponte dismisses the application for a writ of prohibition. 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).

MARY J. BOYLE, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
LARRY A. JONES, J., CONCUR

[1] This court offers no opinion on whether proper procedures were followed in the underlying case.