[Cite as *Colon v. O'Malley*, 2009-Ohio-6473.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93866

THOMAS COLON

RELATOR

vs.

JUDGE KATHLEEN O'MALLEY

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Prohibition
Motion No. 426751
Order No. 428674

RELEASE DATE: December 4, 2009

ATTORNEY FOR RELATOR

Vincent A. Stafford
The Stafford Building
2105 Ontario Street
Cleveland, Ohio 44115

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

BY: Charles E. Hannan, Jr.
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} On September 4, 2009, relator, Thomas Colon, commenced this prohibition action against Judge Kathleen O'Malley. Colon asks this court to permanently enjoin and prohibit Judge O'Malley from exercising jurisdiction in the matter of *Colon v. Colon*, Cuyahoga County Domestic Relations Court Case No. 09 DR 326795. On September 29, 2009, Judge O'Malley, through the Cuyahoga County Prosecutor's office, filed a motion for summary judgment. Colon thereafter filed his response to the motion for summary judgment on October 19, 2009. For the following reason, we grant the motion for summary judgment.

{¶ 2} Initially, we find that Colon's complaint for a writ of prohibition is defective because it is improperly captioned. A complaint for a writ of prohibition

must be brought in the name of the state, on relation of the person applying. Colon's failure to properly caption the complaint warrants dismissal. *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270; *Dunning v. Judge Cleary* (Jan. 11, 2001), Cuyahoga App. No. 78763.

{¶ 3} Despite the aforesaid procedural defect, we find that Colon failed to demonstrate that he is entitled to a writ of prohibition. The principles governing prohibition are well established. In order to be entitled to a writ of prohibition, relators must establish that the respondent is about to exercise judicial or quasi-judicial power, that the exercise of such power is unauthorized by law, and that the denial of the writ will cause injury to relator for which no other adequate remedy in the ordinary course of law exists. *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 1997-Ohio-0202, 686 N.E.2d 267; *State ex rel. Largent v. Fisher* (1989), 43 Ohio St.3d 160, 540 N.E.2d 239. Furthermore, a writ of prohibition should be used with great caution and should not issue in doubtful cases. *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas* (1940), 137 Ohio St. 273, 28 N.E.2d 641.

{¶ 4} With regard to the second and third elements of a prohibition action, the Ohio Supreme Court has stated that if a trial court has general subject-matter jurisdiction over a cause of action, the court has the authority to determine its own jurisdiction and an adequate remedy at law exists by way of an appeal to challenge any adverse decision. *State ex rel. Enyart v. O'Neill*, 71 Ohio St.3d

655, 1994-Ohio-0594, 646 N.E.2d 1110; *State ex rel. Pearson v. Moore* (1990), 48 Ohio St.3d 37, 548 N.E.2d 945.

{¶ 5} However, the Supreme Court has also recognized an exception to this general rule. "Where an inferior court patently and unambiguously lacks jurisdiction over the cause * * * prohibition will lie to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions." *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 1995-Ohio-278, 656 N.E.2d 1288, citing *State ex rel. Lewis v. Moser*, 72 Ohio St.3d 25, 28, 1995-Ohio-148, 647 N.E.2d 155. Thus, if the lower court's lack of jurisdiction is patent and unambiguous, the availability of an adequate remedy at law is immaterial. *State ex rel. Rogers v. McGee Brown*, 80 Ohio St.3d 408, 1997-Ohio-334, 686 N.E.2d 1126.

{¶ 6} Similarly, the same standards are applied to issues of personal jurisdiction. *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 1994-Ohio-229, 638 N.E.2d 541. Absent a patent and unambiguous lack of jurisdiction, an appeal from a decision overruling a motion to dismiss based upon lack of personal jurisdiction will generally provide an adequate legal remedy that precludes extraordinary relief through the issuance of a writ of prohibition. *Goldstein*, supra; *State ex rel. Ruessman v. Flanagan*, 65 Ohio St.3d 464, 1992-Ohio-1312, 605 N.E.2d 31; *State ex rel. Smith v. Avellone* (1987), 31 Ohio St.3d 6, 508 N.E.2d 162.

{¶ 7} We further note that a writ of prohibition will ordinarily not lie when based upon a claim of lack of personal jurisdiction. A writ of prohibition "tests and determines 'solely and only' the subject matter jurisdiction of the lower court." *State ex rel. Jones v. Suster,* 84 Ohio St.3d 70, 73, 1997-Ohio-1231, 701 N.E.2d 1002, citing *State ex rel. Eaton Corp. v. Lancaster* (1988), 40 Ohio St.3d 404, 409, 534 N.E.2d 46. Cases granting prohibition for lack of personal jurisdiction are extremely rare and only occur when the lack of personal jurisdiction is premised on a complete failure to comply with constitutional due process. *Clark v. Connor*, 82 Ohio St.3d 309, 1997-Ohio-1240, 695 N.E.2d 751; see, also, *Fraiberg v. Cuyahoga Cty. Court of Common Pleas, Domestic Relations Div.* (1996), 76 Ohio St.3d 374, 667 N.E.2d 1189, distinguishing *State ex rel. Connor v. McGough* (1989), 46 Ohio St.3d 188, 546 N.E.2d 407; and *State ex rel. Stone v. Court* (1984), 14 Ohio St.3d 32, 470 N.E.2d 899.

{¶ 8} In this matter, it appears that the Colons were married in New York where they lived for four years until they separated, and lived separate and apart for 20 years. On June 16, 2009, Colon's wife filed a complaint for divorce in Cuyahoga County where she alleged that she had been an Ohio resident for at least six months prior to filing the complaint. Judge O'Malley issued a restraining order against the parties, and on August 14, 2009, Colon filed a motion to dismiss for lack of personal jurisdiction, which Judge O'Malley denied. Thereafter, on

September 11, 2009, Judge O'Malley sua sponte vacated the restraining order, stating that the court did not have jurisdiction over the defendant.

{¶ 9} It is clear that Judge O'Malley has jurisdiction to hear the divorce action. R.C. 3105.03 states:

> "The plaintiff in actions for divorce and annulment shall have been a resident of the state at least six months immediately before filing the complaint. Actions for divorce and annulment shall be brought in the proper county for commencement of action pursuant to the Rules of Civil Procedure. The court of common pleas shall hear and determine the case, whether the marriage took place, or the cause of divorce or annulment occurred, within or without the state."

{¶ 10} Additionally, a spouse's residence does not preclude the domestic relations court from conducting divorce proceedings. See R.C. 3105.04.

{¶ 11} A review of Colon's complaint indicates that he recognizes that the Cuyahoga County Domestic Relations Court can grant his wife a divorce. His complaint centers around the court's inability to resolve any financial issues between the parties. Colon argues that, "New York is a more convenient forum as relator's assets which would be subject to division of property are located in New York."

{¶ 12} However, as stated in the motion for summary judgment, Judge O'Malley determined that she did not have jurisdiction over the financial matters of the parties; she sua sponte vacated the restraining order. It appears that any issue regarding the court's exercising jurisdiction over the parties' financial assets is moot. Whether New York is a more convenient forum to litigate this matter in

its entirety is not relevant to whether Judge O'Malley has jurisdiction. Accordingly, we find that Colon failed to demonstrate that Judge O'Malley patently and unambiguously lacks jurisdiction over this cause and an appeal of the denial of Colon's motion to dismiss serves as an adequate remedy at law.

{¶ 13} Accordingly, we grant Judge O'Malley's motion for summary judgment. Relator to bear costs. It is further ordered that the clerk shall serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

Writ denied.

COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and
LARRY A. JONES, J., CONCUR