[Cite as *State ex rel. Barksdale v. Sutula*, 2010-Ohio-2487.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94610

STATE OF OHIO, EX REL. CHRISTOPHER BARKSDALE c/o ESTATE OF JACQUELINE BARKSDALE WILLIAMS

RELATOR

vs.

JUDGE KATHLEEN SUTULA

RESPONDENT

JUDGMENT: COMPLAINT DISMISSED

Writ of Prohibition and Mandamus
Motion Nos. 431648, 431776 and 431225
Order No. 433668

RELEASE DATE: June 2, 2010

FOR RELATOR

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ATTORNEYS FOR RESPONDENT

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Cuyahoga County Prosecutor

By: Charles E. Hannan, Jr.
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LARRY A. JONES, J.:

{¶ 1} On February 1, 2010, the relator, Christopher Barksdale as executor of the estate of his mother Jacqueline Barksdale Williams, commenced this writ action against the respondent, Judge Kathleen Sutula. Barksdale styled his writ as an "original action in mandamus/prohibition." The court concludes that Barksdale's ultimate objective in this writ action is to overturn the respondent judge's ruling on Barksdale's motion to vacate in the underlying case, *Deutsche Bank Trust Co. v. Jacqueline Barksdale Williams, et al.*, Cuyahoga County Common Pleas Court Case No. CV-547780, and to rule that the sale of his mother's property was void

{¶ 2} ab initio because service regarding his mother was improper.[1] On February 17, 2010, Barksdale moved for summary judgment.

{¶ 3} On February 18, 2010, in *TSE Properties, LLC v. Christopher Barksdale*, Cuyahoga County Common Pleas Court Case No. CV-689650, the trial court declared Barksdale to be a vexatious litigator pursuant to R.C. 2323.52. Thus, on March 2, 2010, the respondent, through the Cuyahoga County Prosecutor, filed a notice of Barksdale's vexatious litigator declaration and moved

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[1] The underlying case was a foreclosure action brought against the mother and Perry Williams in November 2004. As shown by the docket, on March 2, 2006, the plaintiff obtained judgment against both defendants jointly and severally for $68,000, and a decree of foreclosure was issued. The property was sold on June 5, 2006, and the sale was confirmed on October 17, 2007. However, Jacqueline had died in February 2004, and the plaintiff never substituted her estate as the proper party. Thus, service on Jacqueline was improper. Since 2006, Barksdale in a variety of proceedings and motions has been trying to use this irregularity to get the land back on the theory that the failure to obtain proper service on his mother meant that the ensuing judgments were void ab initio and that the trial court lacked jurisdiction to proceed with the case. Thus, the sale should be vacated and the parties put back into their positions as of November 2004.

On May 12, 2006, Barksdale, without first moving to intervene or substitute his mother's estate for his mother as the proper defendant, filed a motion for relief from judgment. The respondent denied the motion, and this court dismissed Barksdale's appeal for lack of standing. *Deutsche Bank Trust Co. v. Williams,* 171 Ohio App.3d 230, 2007-Ohio-1828. Barksdale's latest attempt to recover the property was the subject motion to vacate filed in the underlying case on June 19, 2009. The trial court granted the motion in part by vacating the $68,000 judgment against Jacqueline, and dismissing the money damages count against her, because service was improper. However, all other portions of the court's orders remained in full force and effect. Barksdale appealed. *Deutsche Bank Trust Co. v. Williams*, Cuyahoga App. No. 94016. However, this court dismissed the appeal on December 20, 2009, because Barksdale had improperly added TSE Properties, Inc., the current owner of the land, as an appellee, when it was never a party to the underlying case. Barksdale filed a motion for reconsideration which this court denied .

to dismiss on the grounds that he is a vexatious litigator and that he does not state a claim for extraordinary relief in either mandamus or prohibition. Pursuant to R.C. 2323.52(F)(2), Barksdale on March 5, 2010, moved for leave of court to plead.[2] For the following reasons, this court grants the respondent's motion to dismiss, denies Barksdale's motion for leave to plead, denies his motion for summary judgment as moot, and dismisses his writ action.

{¶ 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. Furthermore, if a petitioner had an adequate remedy, relief in prohibition is precluded, even if the remedy was not used. *State ex rel. Lesher 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. City of Berea* (1966), 7 Ohio St.2d 85, 218 N.E.2d 428, certiorari denied (1967), 386 U.S. 957. 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

[2] R.C. 2323.52(F)(2) provides in pertinent part as follows: "A person who is subject to an order entered pursuant to division (D)(1) of this section and who seeks to * * * continue any legal proceedings in a court of appeals * * * shall file an application for leave to proceed in the court of appeals in which the legal proceedings * * * are pending."

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.

{¶ 5} Under R.C. Chapter 2329 the respondent has jurisdiction over foreclosure actions and under Civ.R. 60(B) has jurisdiction to rule on motions to vacate. Thus, the respondent was not patently and unambiguously without jurisdiction in this matter. Furthermore, Barksdale had an adequate remedy at law through appeal, which precludes relief through an extraordinary writ. Indeed, Barksdale sought to pursue those remedies. However, Barksdale's own procedural irregularities resulted in his appeals being dismissed. His failure to properly pursue an appeal or otherwise follow proper procedure does not mean that the remedy of appeal was inadequate or unavailable. Thus, his claim for prohibition is not well-founded.

{¶ 6} Similarly, the requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914. Furthermore, mandamus is not a substitute for appeal. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119; *State ex rel. Daggett v. Gessaman* (1973), 34 Ohio St.2d 55, 295 N.E.2d 659; and *State ex rel. Pressley v. Indus. Comm'n. of Ohio* (1967), 11 Ohio St.2d 141, 228 N.E.2d 631, paragraph three of the syllabus.

Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Tommie Jerninghan v. Judge Patricia Gaughan* (Sept. 26, 1994), Cuyahoga App. No. 67787. Furthermore, if the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108 and *State ex rel. Boardwalk Shopping Center, Inc. v. Court of Appeals for Cuyahoga Cty.* (1990), 56 Ohio St.3d 33, 564 N.E.2d 86.

{¶ 7} In the present case Barksdale does not examine the underlying case in terms of rights and duties, but it is an effort to control judicial discretion. Moreover, the remedy of appeal prevents the issuance of the writ of mandamus. Thus, there is no claim for mandamus.

{¶ 8} In summary, Barksdale's claims for extraordinary relief are not well founded. He does not overcome the declaration of vexatious litigator.

{¶ 9} Accordingly, this court grants the respondent's motion to dismiss, denies Barksdale's motion for leave to plead, and dismisses Barksdale's applications for writs of mandamus and prohibition. Relator to pay costs. The court orders the clerk to serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

LARRY A. JONES, JUDGE

PATRICIA A. BLACKMON, P.J., and

MARY J. BOYLE, J., CONCUR