

[Cite as *State ex rel. Goshay v. Melling*, 2015-Ohio-1462.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102510

STATE OF OHIO EX REL. BRYANT GOSHAY

RELATOR

vs.

BRIAN J. MELLING

RESPONDENT

JUDGMENT:
COMPLAINT DISMISSED

Writ of Prohibition
Motion No. 482635
Order No. 481996

RELEASE DATE: April 14, 2015

FOR RELATOR

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MELODY J. STEWART, J.:

{¶1} Relator, Bryant Goshay, has filed a complaint seeking a writ of prohibition to prevent respondent, Brian J. Melling, from exercising jurisdiction in *Goshay v. Quickchange Operating Co. Ltd.*, Bedford M.C. No. 14CVI003342, which is an action that Goshay filed in July 2014.

{¶2} Respondent moved to dismiss this original action. Goshay opposed the motion and has indicated that respondent is in default for failure to file an answer. Respondent filed a reply in support of the motion to dismiss. The motion to dismiss is granted for the reasons that follow.

{¶3} Relator's claims and arguments are fragmented and not altogether clear; however, he appears to be claiming that respondent lacked jurisdiction to conduct proceedings in the underlying case on January 15, 2015.¹

{¶4} Relator's complaint fails to articulate a claim that would entitle him to a writ of prohibition. The relief sought in the complaint requests a writ "directing *sua sponte* reversal of respondent Court 11/20/14 decision" and demands compensation in the form of punitive and compensatory damages.

{¶5} 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

¹ The municipal court docket attached to the complaint as Exhibit A reflects that relator filed a Motion for New Trial and Notice of Prohibition on December 1, 2014, that the court denied on January 21, 2015. According to the evidence presented, an oral hearing on the motion was held on January 15, 2015.

exercise of such power is unauthorized by law, and (3) there is no adequate remedy at law. *State ex rel. Largent v. Fisher*, 43 Ohio St.3d 160, 540 N.E.2d 239 (1989).

Prohibition will not lie unless it clearly appears that the court has no jurisdiction over the cause that it is attempting to adjudicate or that the court is about to exceed its jurisdiction.

State ex rel. Ellis v. McCabe, 138 Ohio St. 417, 35 N.E.2d 571 (1941), 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 Cty.*, 153 Ohio St. 64, 65, 90 N.E.2d 598 (1950). 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*, 137 Ohio St. 273, 28 N.E.2d 641 (1940); *Reiss v. Columbus Mun. Court*, 145 N.E.2d 447 (10th Dist.1956).

{¶6} 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*, 39 Ohio St.3d 174, 529 N.E.2d 1245 (1988); and *State ex rel. Csank v. Jaffe*, 107 Ohio App.3d 387, 668 N.E.2d 996 (8th Dist.1995). 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 an appeal from the court’s holding that it has jurisdiction. *State ex rel.*

Rootstown Local School Dist. Bd. of Edn. v. Portage Cty. Court of Common Pleas, 78 Ohio St.3d 489, 678 N.E.2d 1365 (1997).

{¶7} Respondent argues that a writ of prohibition does not lie because the case was fully and finally resolved on January 23, 2015. The evidence presented demonstrates that a magistrate's decision was entered on November 20, 2014, finding in favor of defendant and against Goshay. On December 1, 2014, Goshay filed a motion for new trial. The court scheduled an oral hearing on the motion for new trial for January 15, 2015. On January 21, 2015, respondent issued an order denying Goshay's motion for new trial, that was journalized on January 23, 2015. Respondent issued a journal entry of judgment on January 21, 2015, that rejected Goshay's objections and approved the magistrate's decision. The court entered judgment in favor of defendants and against Goshay. The order was journalized on January 23, 2015. Relator's opposition does not dispute that respondent is no longer exercising judicial power in the underlying case but instead refers to the defendant's alleged failure to file a timely answer and contends Civ.R. 55 authorizes entry of default judgment.

{¶8} Respondent is not in default. The filing of the motion to dismiss pursuant to Civ.R. 12(B)(6) tolls the time for filing an answer until the motion is ruled upon. Civ.R. 12(A)(2) and 12(B). See *Barksdale v. Murtis H. Taylor Multi Servs. Ctr.*, 8th Dist. Cuyahoga No. 82540, 2003-Ohio-5653, ¶ 17 (a plaintiff's motion for default judgment was properly denied as moot where the defendant's timely filed motion to dismiss had been granted).

{¶9} Because there is no dispute that a final judgment has been entered in the case and that respondent is no longer exercising jurisdiction in the matter, a writ of prohibition is not appropriate.

A writ of prohibition may be awarded only to prevent the unlawful usurpation of jurisdiction and does not lie to prevent the enforcement of a claimed erroneous judgment previously entered or the administrative acts following the rendition of a judgment by a justice of the peace; it may be invoked only to prevent proceeding in a matter in which there is an absence of jurisdiction and not to review the regularity of an act already performed.

State ex rel. Moss v. Clair, 148 Ohio St. 642, 76 N.E.2d 883 (1947), paragraph one of the syllabus.

{¶10} Respondent also contends that relator has an adequate remedy at law by way of appeal to challenge any errors in the court's exercise of its jurisdiction. Relator has not contested this point nor has relator established that respondent patently and unambiguously lacked jurisdiction.

{¶11} Accordingly, respondent's motion to dismiss is granted because relator's complaint for a writ of prohibition fails to state a claim upon which relief can be granted.

Costs to relator. It is further ordered that the clerk of this court shall serve notice of this judgment and date of entry upon all parties as mandated by Civ.R. 58(B).

{¶12} Complaint dismissed.

MELODY J. STEWART, JUDGE

TIM McCORMACK, P.J., and
PATRICIA A. BLACKMON, J., CONCUR

