

[Cite as *State ex rel. Henderson v. Sweeney*, 2015-Ohio-2282.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102784

STATE OF OHIO EX REL.
TROY HENDERSON

RELATOR

vs.

JUDGE KRISTIN SWEENEY, ET AL.

RESPONDENTS

JUDGMENT:
COMPLAINT DISMISSED

Writ of Prohibition
Motion No. 484976
Order No. 485706

RELEASE DATE: June 8, 2015

FOR RELATOR

Troy Henderson, pro se
11040 Clark Road
Chardon, Ohio 44024

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
BY: Nora Graham
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

MARY J. BOYLE, J.:

{¶1} Sua sponte, Troy Henderson’s complaint for a writ of prohibition is dismissed pursuant to R.C. 2323.52(I). In an entry journalized on April 21, 2015, Henderson was declared to be a vexatious litigator in *Henderson v. Alamby, et al.*, Cuyahoga C.P. No. CV-13-803590. The journal entry provided that “Troy Henderson is found to be a vexatious litigator. Therefore he is prohibited from instituting and/or continuing any legal proceedings and/or making any application and/or any other prohibited conduct as specified in O.R.C. 2323.52.”

{¶2} R.C. 2323.52(D)(3) provides that:

A person who is subject to an order entered pursuant to division (D)(1) of this section may not institute legal proceedings in a court of appeals, *continue any legal proceedings that the vexatious litigator had instituted in a court of appeals prior to entry of the order*, or make any application, other than the application for leave to proceed allowed by division (F)(2) of this section, in any legal proceedings instituted by the vexatious litigator or another person in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to division (F)(2) of this section.

(Emphasis added.)

{¶3} R.C. 2323.52(F)(2) provides that a vexatious litigator “who seeks to institute or *continue any legal proceedings in a court of appeals* or make an application, other than an application for leave to proceed * * * shall file an application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are *pending*. * * *.” (Emphasis added.)

{¶4} In addition, R.C. 2323.52(I) provides that

Whenever it appears by suggestion of the parties or otherwise that a person found to be a vexatious litigator under this section has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate court of common pleas or court of appeals to do so under division (F) of this section, the court in which the legal proceedings are pending *shall dismiss the proceedings* or application of the vexatious litigator.

(Emphasis added.)

{¶5} Henderson’s complaint for a writ of prohibition was filed on March 25, 2015. Henderson was declared a vexatious litigator pursuant to a journal entry journalized on April 21, 2015. Thus, Henderson was required to obtain leave to proceed in the pending complaint for a writ of prohibition. *Cf. Gains v. Harman*, 148 Ohio App.3d 357, 2002-Ohio-2793, 773 N.E.2d 583 (7th Dist.); *Howard v. Admr. Bur. of Workers’ Comp.*, 6th Dist. Lucas No. L-05-1055, 2005-Ohio-3598; *Farley v. Farley*, 10th Dist. Franklin Nos. 99AP-1282, 99AP-419, and 03AP-226, 2005-Ohio-3994. The failure of Henderson to obtain leave to proceed mandates dismissal of the complaint for a writ of prohibition.

{¶6} Notwithstanding Henderson’s failure to obtain leave to proceed in this original action, we find no basis for the granting of a writ of prohibition. Henderson seeks to prevent Judge Kristin Sweeney from “presiding and proceeding in any further litigation regarding contempt charges for the complaint and support order that service was never perfected upon [Henderson]” in *In re J.H.*, Cuyahoga C.P. J.C. No. PR-11-705281.

{¶7} A writ of prohibition is designed to prevent a tribunal from proceeding in a matter in which it is not authorized to hear and determine, or in which it seeks to usurp or

exercise jurisdiction with which it has not been invested by law. *State ex rel. Doe v. Tracy*, 51 Ohio App.3d 198, 555 N.E.2d 674 (12th Dist.1988).

{¶8} It is well established that the purpose of a writ of prohibition is to prevent inferior courts and tribunals from usurping jurisdiction beyond that with which they have been granted by law. *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 686 N.E.2d 267 (1997). Where a court possesses general subject-matter jurisdiction over a pending action, a writ of prohibition will not issue to prevent an error of law. *State ex rel. Bell v. Pfeiffer*, 131 Ohio St.3d 114, 2012-Ohio-54, 961 N.E.2d 181; *State ex rel. Winnefeld v. Court of Common Pleas of Butler Cty.*, 159 Ohio St. 225, 112 N.E.2d 27 (1953). If a court patently and unambiguously lacks general subject-matter jurisdiction, a writ of prohibition will issue to correct the results of prior unauthorized actions. *State ex rel. Cordray v. Marshall*, 123 Ohio St.3d 229, 2009-Ohio-4986, 915 N.E.2d 633. However, if a court does not patently and unambiguously lack general subject-matter jurisdiction, prohibition will not issue and the issue of jurisdiction must be addressed through an appeal. *State ex rel. Bradford v. Trumbull Cty. Court*, 64 Ohio St.3d 502, 597 N.E.2d 116 (1992); *State ex rel. Pearson v. Moore*, 48 Ohio St.3d 37, 548 N.E.2d 945 (1990).

{¶9} In *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, the Supreme Court of Ohio examined in detail the subject of jurisdiction and held that:

The general term “jurisdiction” can be used to connote several distinct concepts, including jurisdiction over the subject matter, jurisdiction over the person, and jurisdiction over a particular case. *Id.* [*Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992] at ¶ 11-12. The often

unspecified use of this polysemic word can lead to confusion and has repeatedly required clarification as to which type of “jurisdiction” is applicable in various legal analyses. *See, eg., id.* at ¶ 33; *Barnes v. Univ. Hosps. of Cleveland*, 119 Ohio St.3d 173, 2008-Ohio-3344, 893 N.E.2d 142, ¶ 27; *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, 855 N.E.2d 851, ¶ 10-16. * * *

Subject-matter jurisdiction is the power of a court to entertain and adjudicate a particular class of cases. *Morrison v. Steiner*, 32 Ohio St.2d 86, 87, 290 N.E.2d 841 (1972). A court’s subject-matter jurisdiction is determined without regard to the rights of the individual parties involved in a particular case. *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 75, 701 N.E.2d 1002 (1998); *Handy v. Ins. Co.*, 37 Ohio St. 366, 370 (1881). A court’s jurisdiction over a particular case refers to the court’s authority to proceed or rule on a case that is within the court’s subject-matter jurisdiction. *Pratts* at ¶ 12, [102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992]. This latter jurisdictional category involves consideration of the rights of the parties. If a court possesses subject-matter jurisdiction, any error in the invocation or exercise of jurisdiction over a particular case causes a judgment to be voidable rather than void. *Id.* at ¶ 12.

Kuchta at ¶ 18 - 19.

{¶10} In the case sub judice, we find that Judge Sweeney possesses general subject matter to determine all juvenile matters. R.C. 2151.23. Judge Sweeney sits as an elected judge of the Juvenile Court of Cuyahoga County. Specifically, R.C. 2151.23(A)(11) cloaks Judge Sweeney with the necessary subject-matter jurisdiction to hear and determine a request for an order for support. Because the underlying juvenile matter involves Henderson and the issue of support, we find that Judge Sweeney possesses the necessary subject-matter jurisdiction to proceed to judgment, which prevents this court from issuing a writ of prohibition. *Junkin, supra*; *State ex rel. Enyart v. O’Neil*, 71 Ohio St.3d 655, 646 N.E.2d 1110 (1995).

{¶11} In addition, Henderson’s claim of lack of personal jurisdiction, as based upon a lack of notice and service, is not cognizable in prohibition. In *State ex rel. Suburban Const. Co. v. Skok*, 85 Ohio St.3d 645, 646, 70 N.E.2d 645 (1999), the Supreme Court of Ohio held that “[i]f contested allegations of defective service of process are not premised upon a complete failure to comply with the minimum-contacts requirement of constitutional due process, prohibition will not lie.” See also *State ex rel. Downs v. Panioto*, 107 Ohio St.3d 347, 2006-Ohio-8, 839 N.E.2d 911; *State ex rel. Lavelle v. Karner*, 8th Dist. Cuyahoga No. 98962, 2012-Ohio-4297. Herein, it is abundantly clear that there exists sufficient minimum contacts between Henderson, the forum state of Ohio, and the litigation in the underlying juvenile case to sustain a finding of personal jurisdiction. In fact, Henderson’s complaint for a writ of prohibition contains statements and exhibits which demonstrate that he is an Ohio resident in an Ohio court, that Henderson was represented by counsel, and that Henderson has filed numerous motions within the underlying juvenile action. See ¶ 5-6, 10 of the complaint for a writ of prohibition and exhibits as attached to the complaint for a writ of prohibition. See also exhibits and sworn affidavit, as attached to Judge Sweeney’s motion for summary judgment, which demonstrate that Henderson has made an appearance within the underlying juvenile action and has thus subjected himself to the jurisdiction of the juvenile court. Thus, prohibition does not lie as based upon a claim of lack of notice and service.

{¶12} It must also be noted that a juvenile court, with regard to contempt proceedings, possesses the same jurisdiction as a common pleas court. R.C. 2151.21. Thus, Judge Sweeney possesses the basic statutory jurisdiction to conduct a contempt hearing, which prevents this court from issuing a writ of prohibition. *Bonhert v. Russo*, 8th Dist. Cuyahoga No. 94103, 2009-Ohio-5707; *State ex rel. Prentice v. Ramsey*, 8th Dist. Cuyahoga No. 89061, 2007-Ohio-533. Also, Henderson possesses an adequate remedy at law, through an appeal, should he be found guilty of contempt. *State ex rel. Hughley v. McMonagle*, 121 Ohio St.3d 536, 2009-Ohio-1703, 905 N.E.2d 1220; *State ex rel. Jaffal v. Calabrese*, 105 Ohio St.3d 440, 2005-Ohio-2591, 828 N.E.2d 107.

{¶13} Finally, the doctrine of res judicata prevents this court from issuing a writ of prohibition on behalf of Henderson. Res judicata “involves both claim preclusion (historically called estoppel by judgment in Ohio) and issue preclusion (traditionally known as collateral estoppel).” *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381, 653 N.E.2d 226 (1995). Claim preclusion provides that “[a] final judgment or decree rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction * * * is a complete bar to any subsequent action on the same claim or cause of action between the parties or those in privity with them.” *Id.*, quoting *Norwood v. McDonald*, 142 Ohio St. 299, 52 N.E.2d 67 (1943), paragraph one of the syllabus.

{¶14} In *State ex rel. Henderson v. Sweeney, et al.*, 8th Dist. Cuyahoga No. 102681, 2015-Ohio-1745, this court addressed Henderson’s prior complaint for a writ of prohibition vis-a-vis his claim that a lack of notice and service prevented Judge Sweeney

from conducting a contempt hearing in *In re: J.H.*, Cuyahoga C.P. J.C. No. PR-11-705281. This court, with regard to the prior complaint for a writ of prohibition, denied Henderson's request for a writ of prohibition on the basis that: 1) Judge Sweeney possessed general subject matter in the underlying juvenile action; 2) Henderson's claim of a lack of jurisdiction, because of a lack of notice and service, was not cognizable in prohibition; 3) Henderson is an Ohio resident pursuing litigation in the underlying juvenile case; 4) Judge Sweeney possesses the basic statutory jurisdiction to conduct contempt hearings; and 5) Henderson possesses an adequate remedy at law through an appeal, should he be found guilty of contempt. Because the issues raised in the present complaint for a writ of prohibition were previously adjudicated in a prior complaint for a writ of prohibition, we find that res judicata is applicable to the present complaint for a writ of prohibition and prevents any further litigation of said issues.

{¶15} Accordingly, we sua sponte dismiss Henderson's complaint for a writ of prohibition. We find that Judge Sweeney's motion for summary judgment is moot. Costs to Henderson. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶16} Complaint dismissed.

MARY J. BOYLE, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
EILEEN T. GALLAGHER, J., CONCUR