

[Cite as *Allan v. Palos*, 2016-Ohio-3073.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103815

QAIS ALLAN, ET AL.

RELATORS

vs.

DIANE M. PALOS, JUDGE

RESPONDENT

JUDGMENT:
COMPLAINT DISMISSED

Writ of Prohibition
Motion No. 492838
Order No. 495231

RELEASE DATE: May 17, 2016

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TIM McCORMACK, P.J.:

{¶1} The relators, Qais Allan, 871 Rocky River Drive, Inc., and Pearl Road, Inc., have filed a complaint for a writ of prohibition. The relators allege that Judge Diane M. Palos lacks jurisdiction to preside over the amended cross-claims of Raida Allan (“wife”) filed in a divorce action captioned *Allan v. Allan*, Cuyahoga C.P. No. DR-15-355865. Specifically, the relators argue that they are new party defendants in the underlying divorce action and that the cross-claims of the wife, as grounded in the claim of improper concealment and transfer of marital assets between Tareq Allan, the husband of the wife (“husband”), and Qais Allan, the brother of husband and brother-in-law of wife (“brother-in-law”), constitutes a tort action that can only be litigated in the General Division of the Cuyahoga County Court of Common Pleas. Judge Palos has filed a motion to dismiss. The relators have filed a joint motion for summary judgment. For the following reasons, we grant Judge Palos’s motion to dismiss and deny the relators’ joint motion for summary judgment.

Facts

{¶2} The following facts, which are pertinent to this original action in prohibition, are gleaned from the complaint for a writ of prohibition, Judge Palos’s motion to dismiss, and the relators’ joint motion for summary judgment.

{¶3} On February 18, 2015, the husband filed a complaint for divorce against his wife in the Cuyahoga County Court of Common Pleas, Domestic Relations Division. Judge Palos was assigned to preside over the divorce action.

{¶4} On September 11, 2015, the wife filed her first amended answer, counterclaims, and cross-claims. Through her counterclaims and cross-claims, wife alleged that husband and brother-in-law were partners and jointly operated two Sunoco gas stations, one located at 871 Rocky River Drive, Berea, Ohio 44017 and the other at 7606 Pearl Rd., Middleburg Heights, Ohio 44130. The wife further alleged that the husband sold his interests in the Sunoco gas stations to the brother-in-law. The wife alleged that the husband and brother-in-law concealed material facts concerning the sale of the Sunoco gas stations, conspired to create the sales of the Sunoco gas stations in order to convert and misappropriate marital property, made representations to wife regarding the business operations of the Sunoco gas stations that were false in order to convert and misappropriate the assets and income of the Sunoco gas stations, and conspired to defeat wife's interest in the marital property. Thus, wife seeks a greater share of the remaining marital assets based upon the concealment of marital assets or the improper transfer of marital property from husband to brother-in-law.

{¶5} On October 23, 2015, the relators filed a motion to dismiss the wife's amended counterclaim and cross-claims. Judge Palos denied the motion to dismiss on November 19, 2015.

{¶6} On November 24, 2015, the relators filed this original action along with an application for an alternative writ. On December 10, 2015, this court denied the relators' application for an alternative writ.

Legal Analysis

{¶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. Brown v. Butler Cty. Bd. of Elections*, 109 Ohio St.3d 63, 2006-Ohio-1292, 846 N.E.2d 8; *State ex rel. Keenan v. Calabrese*, 69 Ohio St.3d 176, 631 N.E.2d 119 (1994); *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, 1992-Ohio-132, 597 N.E.2d 116; *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. *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 922, 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, e.g., 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, 1998 Ohio 275, 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, the relators argue that the wife's claims of concealment of marital property or the improper transfer of marital property from husband to brother-in-law constitute "tort claims" that are outside of the jurisdiction of Judge Palos. We find that the relators have failed to establish that Judge Palos patently and unambiguously lacks the general subject matter jurisdiction to preside over the divorce action pending in DR-15-355865 and the required division of marital property.

{¶11} Judge Palos, as an elected judge of the Cuyahoga Court of Common Pleas, Domestic Relations Division, possesses the basic subject matter jurisdiction to adjudicate the complaint for divorce and to divide all marital assets between the husband and the wife. R.C. 3105.171(C). *See also Neville v. Neville*, 99 Ohio St.3d 275, 2003-Ohio-3624, 791 N.E.2d 434; *Cherry v. Cherry*, 66 Ohio St.2d 348, 421 N.E.2d 1293 (1981); R.C. 3105.011 and 2301.03(B)(2). Judge Palos is also cloaked with the necessary subject matter jurisdiction to hear and determine what constitutes marital property versus separate property and divide the marital and separate property equitably between the husband and wife. *See* R.C. 3105.171(B). It must also be noted that Judge Palos possesses the necessary subject matter jurisdiction to address financial misconduct, on the part of the husband or wife, if either party has engaged in financial misconduct, including, but not limited to the dissipation, destruction, concealment, nondisclosure or fraudulent disposition of marital property, and to compensate the adversely affected husband or wife with a distributive award or with a greater award of marital property. *See* R.C. 3105.171(E) and 3105.171(A)(1). The issue of determining whether or not an

asset should be categorized as marital property, and the value of the marital property for the purpose of distribution, is a matter that is to be determined by Judge Palos in her capacity as a judge of the domestic relations court. *Durisala v. Durisala*, 1st Dist. Hamilton No. C-130719, 2014-Ohio-3309; *Mitchell v. Mitchell*, 11th Dist. Portage 2007 P 0023, 2008-Ohio-833.

{¶12} Finally, because Judge Palos possesses general subject matter jurisdiction in DR-15-355865, prohibition is not available to prevent or correct any erroneous judgment, nor is prohibition available as a remedy for an abuse of discretion or as a remedy in order to prevent an anticipated erroneous judgment. *Ohio Dept. of Adm. Serv., Office of Collective Bargaining v. State Emp. Relations Bd.*, 54 Ohio St.3d 48, 562 N.E.2d 125 (1990); *State ex rel. Eaton Corp. v. Lancaster*, 40 Ohio St.3d 404, 534 N.E.2d 46 (1988). The relators possess an adequate remedy at law by way of an appeal. *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 638 N.E.2d 541 (1994); *State ex rel. Pearson v. Moore*, 48 Ohio St.3d 37, 548 N.E.2d 945 (1990).

{¶13} Accordingly, we grant Judge Palos's motion to dismiss and deny the relators' joint motion for summary judgment. Costs to the relators. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of its entry upon the journal as required by Civ.R. 58(B).

{¶14} Complaint dismissed.

TIM McCORMACK, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
MARY J. BOYLE, J., CONCUR