

[Cite as *State ex rel. Samara v. Suster*, 2016-Ohio-818.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103543

STATE OF OHIO, EX REL.
ROBYN SAMARA

RELATOR

vs.

JUDGE RONALD SUSTER

RESPONDENT

JUDGMENT:
PETITION DISMISSED

Writ of Prohibition
Motion No. 490755
Order No. 493414

RELEASE DATE: March 2, 2016

FOR RELATOR

Robin Samara, pro se
2106 West 93rd Street
Cleveland, Ohio 44102

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Charles E. Hannan
Assistant County Prosecutor
The Justice Center - 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

EILEEN A. GALLAGHER, J.:

{¶1} Robyn Samara has petitioned this court for a peremptory and permanent writ of prohibition regarding the foreclosure action that was commenced in the Cuyahoga County Common Pleas Court, *Cuyahoga Cty. Treasurer v. Samara*, Cuyahoga C.P. No. CV-12-773761. A final order was entered in that case in 2013, which was affirmed on appeal in *Cuyahoga Cty. Treasurer v. Samara*, 8th Dist. Cuyahoga No. 99977, 2014-Ohio-2974. Respondent Judge Ronald Suster has moved to dismiss the petition for failure to state a claim. Samara opposes the motion arguing that the orders issued in that matter are void because “the officers involved in Case No. CV-12-773761” allegedly “refused their offices” and lacked “standing in jurisdiction over the subject matter.” For the reasons that follow, respondent’s motion to dismiss is granted.

{¶2} The requirements for entitlement to a writ of prohibition 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*, 43 Ohio St.3d 160, 540 N.E.2d 239 (1989).

{¶3} Prohibition will not lie unless it clearly appears that the court has no jurisdiction of the cause that it is attempting to adjudicate or 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).__

{¶4} However, 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). 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 through 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).

{¶5} In her opposition to respondent's motion to dismiss, Samara admits she is not challenging the jurisdiction of the court of common pleas to hear foreclosure actions. The Cuyahoga County Court of Common Pleas does have subject-matter jurisdiction over foreclosure actions. Samara, however, contends that respondent lacked jurisdiction over the subject matter in her case because she believes that the proper oaths of office do not exist, thereby rendering the orders that were issued in the case void.

{¶6} Samara has submitted no authority in support of her contention that the failure to produce oaths of office renders the orders issued in the foreclosure action void and subject to a writ of prohibition. Samara alleges that she has filed a mandamus action seeking oaths, qualifications and fiduciary bond information against respondents and "additional Cuyahoga County Officers involved in Petitioner's property." She indicates some information was provided but that it was "not certified * * * contained multiple errors and omissions, and was not in compliance with the law." These bare allegations do not present sufficient evidence from which it could be determined that respondent did or did not take an oath or affirmation as

required by law or whether he was properly assigned to active duty as a judge pursuant to the law in the foreclosure action. *See* Ohio Constitution, Section 7, Article XV; Ohio Constitution Section 6 (C), Article IV; R.C. 3.22; R.C. 3.23; R.C. 141.16.

{¶7} It is well settled that a judgment is only void if the court lacks subject matter jurisdiction, however, a “lack of jurisdiction over a particular case merely renders the judgment voidable.” *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, 855 N.E.2d 851, ¶ 10. “In a court that possesses subject-matter jurisdiction, procedural irregularities in the transfer of a case to a visiting judge affect the court’s jurisdiction over the particular case and render the judgment voidable, not void.” *In re J.J.* at ¶ 15. The proper means of challenging a trial court judge’s alleged lack of jurisdiction to preside over a particular case is by objecting at the trial level and through a direct appeal. *Id.* at ¶ 10-15. Therefore, relator had an adequate remedy at law to raise this issue in the direct appeal.

{¶8} Even if Samara could establish an irregularity in respondent’s assignment or appointment that does not render his judicial actions in the foreclosure action void. *Demereaux v. State*, 35 Ohio App. 418, 172 N.E. 551 (1930). “A judge having ‘colorable’ authority is deemed a de facto judge with all the power and authority of a proper de jure judge.” *State ex rel. Evans v. Shoemaker*, 10th Dist. Franklin No. 02AP-671, 2003-Ohio-757, ¶ 14.

{¶9} Petitioner has not established the requirements necessary for issuance of a writ of prohibition. Respondent’s motion to dismiss is granted. Petitioner to pay costs. The court directs the clerk of court to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶10} Petition dismissed.

EILEEN A. GALLAGHER, JUDGE

LARRY A. JONES, SR., A.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR