

[Cite as *Martin v. Buchanan*, 2017-Ohio-301.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105063

TRAMAINE E. MARTIN

RELATOR

vs.

HON. A. DEAN BUCHANAN, JUDGE, ET AL.

RESPONDENTS

**JUDGMENT:
WRITS DENIED**

Writs of Mandamus and Prohibition
Motion No. 502302
Order No. 503233

RELEASE DATE: January 20, 2017

FOR RELATOR

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KATHLEEN ANN KEOUGH, A.J.:

{¶1} Relator Tramaine E. Martin has filed a complaint for writs of mandamus and prohibition regarding underlying criminal cases captioned *Cleveland Hts. v. Martin*, Cleveland Hts. M.C. No. CRB 1301152 and *Cleveland Hts. v. Martin*, Cleveland Hts. M.C. No. CRB 1600519A. Martin seeks a writ of mandamus directing respondent to issue a final, appealable order in CRB 1301152 and a writ of prohibition regarding the disposition of the bond posted in CRB 1600519A. Respondent has opposed the complaint and relator has moved for summary judgment on his complaint. We find that Martin is not entitled to the requested writs that are denied for the reasons that follow.

{¶2} The requisites for mandamus are well established: 1) the relator must establish a clear legal right to the requested relief; 2) the respondent must possess a clear legal duty to perform the requested relief; and 3) the relator does not possess nor possessed an adequate remedy at law. *State ex rel. Tran. v. McGrath*, 78 Ohio St.3d 45, 676 N.E.2d 108 (1997).__

{¶3} Mandamus is precluded if relator has or had an adequate remedy of law even if relator fails to use it. *State ex rel. Nash v. Fuerst*, 8th Dist. Cuyahoga No. 99027, 2013-Ohio-592, ¶ 6, citing *State ex rel. Tran.*; and *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.*, 56 Ohio St.3d 33, 564 N.E.2d 86 (1990). “It must be emphasized that a writ of mandamus is an extraordinary remedy which is carefully and cautiously granted only when there exists no plain and adequate remedy in

the ordinary course of the law.” *State ex rel. Fostoria Daily Rev. Co. v. Fostoria Hosp. Assn.*, 32 Ohio St.3d 327, 512 N.E.2d 1176 (1987).__

{¶4} “A writ of prohibition is an extraordinary remedy that is granted in limited circumstances with great caution and restraint.” *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 2001-Ohio-15, 740 N.E.2d 265. To obtain a writ of prohibition, relators are required to establish: (1) that Judge Buchanan is about to exercise judicial or quasi-judicial power, (2) that the exercise of that power is unauthorized by law, and (3) that denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law. *State ex rel. Abraitis v. Gallagher*, 143 Ohio St.3d 439, 2015-Ohio-2312, 39 N.E.3d 491, ¶ 9. Relator need not demonstrate the lack of an adequate remedy if the court’s lack of jurisdiction is “patent and unambiguous.” *Id.*__

{¶5} “Absent a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging the court’s jurisdiction has an adequate remedy by way of appeal.” *State ex rel. Steffen v. Myers*, 143 Ohio St.3d 430, 2015-Ohio-2005, 39 N.E.3d 483, ¶ 17.

{¶6} Relator appealed from a judgment imposed by respondent in CRB 1301152 on November 25, 2013, to this court in *Cleveland Hts. v. Martin*, 8th Dist. Cuyahoga No. 100682. This court dismissed that appeal on April 3, 2014, for lack of a final, appealable order. Over two years later, relator filed a motion to correct void judgment of conviction. Respondent set the case for hearing where the finality and validity of the order on March 15, 2013, would have been addressed; however, relator failed to appear

for the hearing. Respondent then set a new hearing for November 16, 2016. Because respondent has set the matter for hearing to address the issue, relator has not established entitlement to a writ. Relator has an adequate remedy at law to resolve this issue, which precludes a writ of mandamus.

{¶7} In response to relator's complaint for a writ of mandamus, respondent contends that it was authorized to apply the bail to fines and costs pursuant to R.C. 2937.40(B), which provides:

(B)___When cash or securities have been deposited as bail by a person other than the accused and the bail is discharged and released pursuant to division (A) of this section, or when property has been pledged by a surety on recognizance and the surety on recognizance has been released pursuant to division (A) of this section, the court shall not deduct any amount from the cash or securities or declare forfeited and levy or execute against pledged property. The court shall not apply any of the deposited cash or securities toward, or declare forfeited and levy or execute against property pledged for a recognizance for, the satisfaction of any penalty or fine, and court costs, assessed against the accused upon his conviction or guilty plea, except upon express approval of the person who deposited the cash or securities or the surety.

Respondent submitted a copy of a document signed by Tyrone P. Martin, which provided, "The depositor, if not the defendant, expressly approves the use of said bond to pay the

fine and costs as per section 2937.40B of the Ohio Revised Code.” Relator alleges the law prohibited the court from applying the funds to fines and costs and broadly alleges that “the Revised Code further proscribes identity theft and falsification of records/documents.” Relator has not presented any evidence of identity theft or falsification. In any case, the statute vested the court with jurisdiction to apply the bond to fines and costs based on the express approval of the person who deposited the cash or securities with the surety, relator has or had other adequate remedies at law to litigate the alleged improper application of the bond for fines and costs, and, therefore, relator is not entitled to a writ of prohibition.

{¶8} Relator’s motion for summary judgment is denied. Relator is not entitled to writs of mandamus or prohibition, which are denied. Relator to pay costs.

{¶9} Writs denied.

KATHLEEN ANN KEOUGH, ADMINISTRATIVE JUDGE

MARY J. BOYLE, J., and
SEAN C. GALLAGHER, J., CONCUR