[Cite as *State ex rel. McKee v. Gallagher*, 2017-Ohio-545.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105392

STATE OF OHIO, EX REL., EDWARD MCKEE

RELATOR

vs.

JUDGE SHANNON GALLAGHER

RESPONDENT

JUDGMENT:
WRIT DISMISSED

Writ of Prohibition
Order No. 504510

RELEASE DATE: February 15, 2017

FOR RELATOR

Edward McKee, pro se
5838 Darry Circle
Norcross, Georgia 30093

ATTORNEY FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

MARY J. BOYLE, J.:

{¶1} On January 21, 2017, the petitioner, Edward McKee, commenced this prohibition action against the respondent, Judge Shannon Gallagher, to prevent a Local Rule 29 arbitration hearing, scheduled for February 21, 2017, from going forward in the underlying case, *McKee v. Hunter,* Cuyahoga C.P. No. CV-15-848228. For the following reasons, this court, sua sponte, dismisses the application for an extraordinary writ.

{¶2} The underlying case is a tort action seeking recovery for injuries arising from the collision of a bicycle and a car making a left-hand turn. McKee's complaint, pursuant to Civ.R. 8(A), alleges damages in excess of $25,000. Loc.R. 29 of the Court of Common Pleas of Cuyahoga County provides that a judge may order a case to arbitration if the amount in controversy is $50,000 or less. If the amount in controversy exceeds $50,000, all parties must consent to the arbitration.

{¶3} In January 2017, the respondent judge referred the case to arbitration. McKee did not consent and moved the respondent judge for a stay. When the judge denied that motion, McKee moved for reconsideration and argued that Loc.R. 29 specifies that all parties must consent to the arbitration if the amount in controversy exceeds $50,000. He then asserted that "[t]he upper bound of damages is therefore currently unknown and may easily be more than $50,000." When the judge denied the

motion for reconsideration, he commenced this prohibition action, arguing that because the prerequisite consent of all the parties was not obtained, the respondent judge lacked the authority to order arbitration. Moreover, McKee lives in Georgia, and he argues that there is no adequate remedy because of the expense entailed in coming to Cleveland for the arbitration.

{¶4} 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 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 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); and *Reiss v. Columbus Mun. Court*, 76 Ohio Law Abs. 141, 145 N.E.2d 447 (10th Dist.1956). Nevertheless, 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). Moreover, this court has discretion in issuing the writ of prohibition. *State ex rel. Gilligan v. Hoddinott*, 36 Ohio St.2d 127, 304 N.E.2d 382 (1973).

{¶5} In *Kuenzer v. Teamsters Union Local 507*, 66 Ohio St.2d 201, 410 N.E.2d 1009 (1981), the Supreme Court of Ohio examined whether referral to arbitration under Loc.R. 29 when the amount in controversy exceeded the stated amount constituted error.[1] The Court ruled that the trial court could unilaterally invoke Loc.R. 29, if the court determines that the amount in controversy actually does not exceed the stated amount. "Local Rule 29 is to be construed as granting a judge discretion to look beyond the amount of damages alleged in the complaint. * * * absent a showing of an abuse of discretion by the trial court, the failure to state in the record the reasons for referring a case to arbitration is not reversible error." *Id.* at 202-203.

---

[1]In 1981, the rule provided that if the amount in controversy exceeded $10,000, all parties must consent. The plaintiff asserted that the amount of damages exceeded $10,000 and that the trial court could not order the arbitration unless he consented. When the plaintiff did not attend the arbitration, the trial court dismissed the case.

{¶6} Applying *Kuenzer* to the present case establishes that prohibition will not lie. McKee in his own pleadings has not shown with certainty that his damages exceed $50,000. Thus, the respondent judge exercised her discretion within her jurisdiction to send the case to arbitration. Furthermore, prohibition does not lie to correct abuses of discretion. *Woodard v. Colaluca*, 8th Dist. Cuyahoga No. 101327, 2014-Ohio-3824.

{¶7} McKee's reliance on *State ex rel. Glass v. Reid*, 62 Ohio App.3d 328, 575 N.E.2d 516 (2d Dist.1991), is misplaced and distinguishable. That case concerned the conflict between a local rule for arbitration and R.C. 2711.21, the statute governing arbitration for medical malpractice cases. The court of appeals ruled that the trial court exceeded its jurisdiction by using the local rule to override the specific statute. In the present case, no such conflict exists, and *Kuenzer* controls.

{¶8} Accordingly, this court dismisses the application for a writ of prohibition. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶9} Writ dismissed.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR