
The Supreme Court of Ohio

STATE OF OHIO, EX REL §
ERIKA HOUSKA AND DENISE BENKO §
RELATORS §
VS. §
THE HONORABLE SUSAN STEINHAUER §
JUDGE SUMMIT COUNTY §
COURT OF COMMON PLEAS §
DOMESTIC RELATIONS DIVISION §
AND §
THE HONORABLE STEPHEN COLLINS §
MAGISTRATE SUMMIT COUNTY §
COURT OF COMMON PLEAS §
DOMESTIC RELATIONS DIVISION, ET AL §
RESPONDENTS §

CASE NO. _____

ORIGINAL COMPLAINT
FOR WRIT OF PROHIBITION

COMPLAINT FOR WRIT OF PROHIBITION WITH MOTION FOR ALTERNATE WRIT ATTACHED AND REQUEST TO EXPEDITE

ERIKA HOUSKA §
6050 BEACH RD. §
WADSWORTH, OH 44281 §
RELATOR §
and §
DENISIE BENKO §
1851 WILBUR RD. §
MEDINA, OH 44256 §
RELATOR §
VS. §

THE HONORABLE SUSAN STEINHAUER
JUDGE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY COURTHOUSE ADDITION
205 SOUTH HIGH STREET
AKRON, OHIO 44308
RESPONDENT

and

MAGISTRATE STEPHEN COLLINS
COURT OF COMMON PLEAS
DOMESTIC REALTIONS DIVISION
205 SOUTH HIGH STREET
AKRON, OHIO 44308
RESPONDENT

and

MARGARET AZAR
5952 BEACH RD.
WADSWORTH, OHIO 44281
RESPONDENT

and

WILLIAM B. YOUNG, ESQ.
SPECIAL FIDUCIARY.
105 WEST LIBERT STREET
MEDINA, OHIO 44256
RESPONDENT

NOW COMES, the STATE OF OHIO, by and through the above-named Relators, and for their
complaint against Respondents, state:

STATEMENT OF FACTS

1. This matter is brought under Ohio Constitution Art. IV, Section 2, B(1)(d), under the original jurisdiction of this Court to issue Writs of Prohibition and request to expedite is made for the attached Motion for Alternate Writ of Prohibition.
2. Respondent, Susan Steinhauer is a Judge of the Court of Common Pleas, Domestic Relations Division of Summit County, Ohio.
3. Respondent, Stephen Collins is a Magistrate of the Court of Common Pleas, Domestic Relations Division of Summit County, Ohio.
4. Respondent, Margaret Azar, in 1996 filed a divorce action against her then husband, Kenneth Azar in the Summit County Court of Common Pleas Domestic Relations Division, Case *Margaret Azar vs. Kenneth Azar*, Case # DR 96 02 0289, (“Summit County Divorce Case”).
5. Relators, Erica Houska and Denise Benko, are two of the five natural children of Margaret Azar and Kenneth Azar, (jointly “Azars”).
6. A December 31, 2002, *Judgment Entry* in the Summit County Divorce Case provided that a final decree of divorce was entered on March 12, 1997 granting the Azars a divorce and at Article 3, paragraph C the Final Divorce Decree ordered the Azars to transfer to a trust the Azars’ marital property, a Naples Florida Condominium. (A copy of the December 31, 2002, *Judgment Entry*, Exhibit A, is attached and incorporated by reference).
7. One condition of the December 31, 2003 *Judgment Entry* “ORDERED that any change in the Trust Agreement be by mutual written agreement between the parties and Court shall retain jurisdiction to enforce the execution and/or modification said Trust for the best interest of the parties.”

8. On July 3, 2003, as ordered by the December 31, 2002 *Judgment Entry*, the Azars' executed a trust agreement, ("Trust Agreement"), which created the *Margaret Azar and Kenneth Azar Revocable Living Trust*, ("Trust"). (A copy of the *Trust Agreement*, Exhibit B, is attached and incorporated by reference).
9. The *Trust Agreement* created use licenses of the Florida Condominium for each of the Azars with the Azars' children being vested remaindermen of the *Trust's* assets upon termination.
10. Relators are among the vested remaindermen of the *Trust's* assets upon termination.
11. The Summit County Domestic Relations Court's August 8, 2003 *Order* approved the *Trust Agreement* and the *Trust* created. (A copy of the August 8, 2003 *Order*, Exhibit C, is attached and incorporated by reference.)
9. Kenneth Azar died on April 3, 2012. (A copy of Kenneth Azar's Death Certificate, Exhibit D, is attached and incorporated by reference.)
10. On September 8, 2019, Relators, Erica Houska and Denise Benko, as Trustees of the Trust filed a joint complaint in the Court of Common Pleas, Medina County, Ohio Probate Division, Case No. 2018 09 CA 00011, ("Medina County Probate Case").
11. The Relators' original complaint and amended complaint seek: (i) a declaratory judgment interpreting the Azar Trust; (ii) an order to sell the *Trust's* sole asset the Florida Condominium; (iii) an order to distribute the proceeds upon sale of the Florida Condominium; and (iv) an order terminating the *Trust*. (A copy of the Docket of the Medina County Action, Exhibit E, is attached and incorporated by reference).

12. Margaret Azar is named and joined as a Defendant in the Medina County Probate Court Case.
13. For over three years Margaret Azar and the other Defendants have been represented by legal counsel in the Medina County Probate Case. Margaret Azar, with the other Defendants, has participated in all proceedings including, but not limited to: the filing of an answer, a counterclaim, a motion for a preliminary injunction, participating in mediation, stipulating to the sale of the Florida Condominium, moving for partial summary judgment and opposed Realtors' partial summary judgment.
14. In the Medina County Case Plaintiffs and Defendants filed motions for partial summary judgment upon which the Magistrate ruled.
15. The Magistrate in part ruled the *Trust Agreement* was irrevocable upon Kenneth Azar's death and could not be amended to change the named remaindermen beneficiaries without Kenneth Azar's consent, which is impossible to obtain.
16. Margaret Azar with the other Defendants filed objections to the Magistrate's decision on the motions for summary judgment.
17. On February 4, 2020, Respondent William B. Young was appointed Special Fiduciary by Judge Kevin W. Dunn to exercise all the powers of trustee under the *Trust Agreement*. (A copy of the February 4, 2020 *Journal Entry Appointing Special Fiduciary, Exhibit F*, is attached and incorporated by reference.).
18. On November 17, 2020, Judge Kevin W. Dunn granted Respondent, William Young, Special Fiduciary's motion to sell the *Trust's* Florida Condominium for \$1.175,000.

19. On November 18, 2020, Margaret Azar and the other defendants filed their Notice of Appeal to the Ninth District Court of Appeals of the interim order approving the sale; Case # 20 CA 0069-M.
20. On November 16, 2020, without notice to the Medina County Probate Court, the Special Fiduciary or Relators, Margaret Azar had a document filed in Florida wherein she purported to revoke the *Trust Agreement*, which halted the sale of the Florida Condominium, due to the cloud on the title of the Florida Condominium created by Margaret Azar's filing.
21. On June 18, 2021, Margaret Azar filed in the Summit County Divorce Case an *Application To Modify Provisions & Notice of Revocation of Trust & For Other Equitable Relief*, ("Application to Modify & Terminate Trust").
22. Margaret Azar's *Application to Modify & Terminate Trust* asks the Summit County Domestic Relations Court to recognize her attempt to revoke the *Trust Agreement* through a State of Florida filing; and to order revocation of the Trust. (A copy of the *Application To Modify & Terminate Trust*, Exhibit G, is attached and incorporated by reference).
23. On July 15, 2021, a Notice of Dismissal of Appeal was filed in the Medina County Probate Case by the Ninth District Court of Appeals holding the appeal of the Medina County Probated order of sale was moot due the failure of the sale of the Florida Condominium.
24. On August 19, 2021, Margaret Azar filed a *Motion To Amend Beneficiaries of Trust*, ("Motion To Amend Trust Beneficiaries"), in the Summit County Divorce Case to amend her named remaindermen beneficiaries. (A copy of the *Motion To Amend Beneficiaries*, Exhibit H, is attached and incorporated by reference).

25. On August 19, 2021, Margaret Azar filed a *Notice of Death of Defendant Kenneth Azar and Notice of Related Litigation* wherein the Medina County Probate Case's existence was disclosed to Respondent Judge Susan K. Steinhauer and Respondent Magistrate Stephen Collins. (A copy of the *Notice of Death of Defendant Kenneth Azar and Notice of Related Litigation*, Exhibit I, is attached and incorporated by reference)..
26. On August 20, 2021, a *Notice of Evidentiary Hearing* was issued by the Summit County Domestic Relations Court providing "This matter is scheduled for an EVIDENTIARY HEARING before Magistrate Stephan Collins on 11/23/21 at 1:00 PM." (A copy of the *Notice of Evidentiary Hearing*, Exhibit J, is attached and incorporated by reference).
27. On August 23, 2021, Judge Kevin W. Dunn recused himself from further participation in the Medina County Probate Case and this Court appointed retired Judge Phillip A. B. Mayer to preside over the Case, {21EJA2236}.
28. On August 27, 2021, Margaret Azar and the other Defendants filed a *Motion To Stay Pending Decision of Summit County Domestic Relations Court* in the Medina County Probate Case.
29. On August 31, 2021, Judge Phillip A. B. Mayer denied the *Motion To Stay Pending Decision of Summit County Domestic Relations Court* and Margaret Azar and the other Defendants filed an appeal to the Ninth District Court of Appeals, Case # 21CA0068-M.
- .30. Upon information and belief, Margaret Azar is seeking to hold Judge A.D. Mayer from exercising his authority to proceed with decisions in the Medina County Probate Case and permit Judge Susan K. Steinhauer and Magistrate Stephen Collins to exercise jurisdiction to consider the same issue being litigated in the Medina County Probate Case.

31. On October 26, 2021, William B. Young filed *Special Fiduciary's Motion To Dismiss* in the Summit County Divorce Case. [A copy of the *Special Fiduciary's Motion To Dismiss*, Exhibit K, (without exhibits), is attached and incorporated by reference].

BRANCH ONE
JURISDICTIONAL PRIORITY RULE

32. Relators re-allege and incorporate by reference all the statements in paragraphs One through Thirty-one (31), as if fully re-written herein.
33. The jurisdictional priority rule recognized in *State ex rel. Racing Guild, Local 304 v. Morgan, Judge*, 17 Ohio St. 3d 54 (1985) precludes Judge Susan K. Steinhauer and Magistrate Stephen Collins from exercising jurisdiction to hear the same issues regarding the *Trust Agreement* first invoked in the Medina County Probate Case and being heard by Judge A. B. Mayer, retired and sitting by assignment of this Court.

BRANCH TWO
LACK OF STATUTORY AUTHORITY TO MODIFY AZAR MARITAL PROPERTY DISPOSITION

34. Relators re-allege and incorporate by reference all the statements in paragraphs One through Thirty-three (33), as if fully re-written herein.
35. Upon information and belief, Judge Susan K. Steinhauer and Magistrate Stephen Collins, unless prohibited by this Court, will invoke jurisdiction without statutory right or authority to hear and decide Margaret Azar's unilateral *Application to Modify & Terminate Trust* and her unilateral *Motion to Amend Trust Beneficiaries*.

36. The December 31, 2002 *Judgment Entry*, Exhibit A, “ORDERED that any change in the *Trust Agreement* be by mutual written agreement between the parties and Court shall retain jurisdiction to enforce the execution and/or modification of said Trust for the best interest of the parties.”
37. Due to the death of Kenneth Azar, there can be no mutual written agreement between the parties, moreover, in 2003 there was no statutory authority for the Summit County Domestic Relations Court to retain jurisdiction over the *Trust Agreement*.
38. When, the Summit County Domestic Relations Court ordered Margaret Azar and Kenneth Azar to enter into the *Trust Agreement*, upon the terms approved by the Court and ordered the Azar’s Florida Condominium deeded to the Margaret Azar and Kenneth Azar Living Revocable Trust there was a disposition of martial property by the Court under O.R.C. § 3105.171.
39. O. R. C. § 3105.171(I) in effect in 2003, provided: “[a] division or disbursement of property or a distributive award made under this section is not subject to future modification by the court.”
40. Therefore, under O. R. C. § 3105.171(I), in effect in 2003, neither the Summit County Domestic Relations Court or Margaret Azar and Kenneth Azar could confer continuing jurisdiction upon the Summit County Domestic Relations Court to modify the disposition of the Azars’ martial property after approval of the *Trust*.

BRANCH THREE
NO ADEQUATE REMEDY AT LAW

41. Relators re-allege and incorporate by reference all the statements in paragraphs One through Forty (40), as if fully re-written herein.
42. On information and belief, Judge Susan K. Steinhauer and Magistrate Stephen Collins, unless prohibited by this Court, will invoke jurisdiction without statutory right or authority to hear Margaret Azar's unilateral *Application to Modify & Terminate Trust* and her unilateral *Motion to Amend Trust Beneficiaries*.
43. Relators, Erica Houska and Denise Benko are named beneficiaries and are vested remaindermen under the *Trust Agreement*.
44. Relators are not parties to the Summit County Divorce Case and their claims and rights as remaindermen beneficiaries being litigated in the Medina County Probate Case are subject to possible conflicting rulings by the Medina County Probate Court and the Summit County Domestic Relations Court.
45. Upon information and belief, Judge Susan K. Steinhauer and Magistrate Stephen Collins, unless prohibited by this Court, will deny Relators' substantive due process by ruling on Margaret Azar's unilateral *Application to Modify & Terminate Trust* and her unilateral *Motion to Amend Trust Beneficiaries*.
46. Because Relators have no standing in the Summit County Divorce Case, Relators have no adequate remedy at law to prevent possible conflicting judicial decisions declaring their vested property rights under the *Trust Agreement*.

WHEREFORE, Relators petitions this Court to: (1)expedite consideration of Relators' request for an Alternative Writ of Prohibition; (2) issue an Alternate Writ of Prohibition prohibiting Judge

Susan K. Steinhauer and Magistrate Stephen Collins from further consideration of unilateral *Application to Modify & Terminate Trust* and her unilateral *Motion to Amend Trust Beneficiaries* (3) issue a Writ of Prohibition prohibiting Judge Susan K. Steinhauer and Magistrate Stephen Collins from further consideration of unilateral *Application to Modify & Terminate Trust* and her unilateral *Motion to Amend Trust Beneficiaries*; and (4) grant Relators such further and additional relief as the Court may deem just and equitable.

Respectfully submitted,

/s/ *WILLIAM F. HUTSON*

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