

IN THE SUPREME COURT OF OHIO

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|---|---|---------------------------|
| STATE ex rel. EDWARD L. SCHLEGEL |) | CASE NO. 2022-0025 |
| JR. |) | |
| Relator |) | |
| v. |) | |
| |) | |
| JUDGE MAUREEN A. SWEENEY |) | |
| |) | |
| Respondent |) | |
| and |) | |
| |) | |
| THE BOARD OF COMMISSIONERS OF |) | |
| THE MILL CREEK METRO. DIST., |) | |
| RALPH T. MEACHAM, CPA, and |) | |
| DANIEL R. YEMMA |) | |
| |) | |
| Additional Parties |) | |

MILL CREEK'S MOTION TO DISMISS

Now comes Additional Party, The Board of Commissioners of the Mill Creek Metropolitan Park District ("Mill Creek"), by and through counsel, and respectfully moves this Court to dismiss the Petition for Writs of Temporary and Permanent Prohibition, because the Petition fails to state a claim upon which relief in prohibition can be granted. A memorandum in support is attached hereto and fully incorporated herein.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF MILL CREEK’S MOTION TO DISMISS
THE PETITION FOR WRITS OF PROHIBITION**

I. Statement of the Case and Procedural Posture

Relator seeks Temporary and Permanent Writs of Prohibition to enjoin the Honorable Maureen A. Sweeney (“Respondent Judge” or “Trial Court”) from exercising her judicial authority to conduct a civil trial in the appropriation case initiated by Mill Creek to acquire a portion of Relator’s real property for public purposes. That case is currently pending in the Mahoning County Court of Common Pleas and styled as *The Board of Commissioners of the Mill Creek Metropolitan Park District v. Edward L. Schlegel Jr., et al.*, Case No. 2019 CV 00181 (“Appropriation Case”). Relator does not challenge the Trial Court’s subject matter jurisdiction to try appropriation cases, only this Appropriation Case based on recent Legislation, which is alleged by Relator to restrict Mill Creek’s authority to appropriate his property.

In the Appropriation Case, now scheduled for a jury trial on January 25, 2022, Relator previously filed a Motion to Stay and a Motion for Judgment on the Pleadings, both of which were overruled by Respondent Judge and neither of which is a final appealable order.

Following his unsuccessful motions, Relator filed his Petition in Prohibition trying an end-around. Relator seeks to avoid the jury trial and any subsequent appellate process by claiming that Legislation (cited later herein) adopted during the pendency of Mill Creek’s Appropriation Case removes the Trial Court’s jurisdiction over the case for judicial economy. If there is any lack of judicial economy and waste of time and resources for the parties and the courts, it is Relator’s misplaced Petition.

The question raised by Relator about the effect, if any, of the Legislation on Mill Creek’s Appropriation Case boils down to whether the Legislation restricts Mill Creek’s authority to appropriate Relator’s property for a bike path. The question is not whether Respondent Judge has

the jurisdiction to hear and decide Mill Creek's Appropriation Case. In short, this is about Mill Creek's authority to appropriate Relator's property, not the Trial Court's jurisdiction. As such, Relator fails to state a claim against Respondent Judge for which any relief in prohibition may be granted.

The Trial Court disposed of Relator's Motion for Judgment on the Pleadings by concluding that the Legislation was not retroactive and that it did not restrict Mill Creek's statutory authority to appropriate Relator's property for the extension of its public bike path in Mahoning County. Relator has an adequate remedy at law to appeal any final adverse judgment about Mill Creek's authority in the Appropriation Case. Relator's proposed detour around that judicial process through a Petition in Prohibition is not available to Relator.

II. Statement of Facts and Proceedings

In the underlying case, Mill Creek filed its Petition with the Trial Court against Relator on January 24, 2019 to purchase and acquire, by way of warranty deed, a right of way for public transportation, recreation, public highway, and road purposes in, under, upon and across a portion of the Relator's real property ("Subject Property"), together with a temporary construction easement that will not alter ownership. Relator's Answer filed on February 13, 2019, neither specifically denied the necessity of the appropriation, nor did it deny or question Mill Creek's authority to undertake the appropriation of the Subject Property.

Well prior to filing the Petition, Mill Creek passed Resolution, R-93-2 on February 25, 1993, which resolved that:

"The public interest demanded the construction of a Bicycle Path on abandoned Conrail (railroad) right-of-way from Western Reserve Road on the south to the Mahoning Trumbull County line Road on the north. Total length being approximately twelve (12) miles long, situated in Mahoning County, City of Canfield, State of Ohio."

A true and accurate copy of said resolution is attached to the Mill Creek's Petition (in the Appropriation Case) as Exhibit 2 and incorporated herein.

During 2000 and 2001, Mill Creek constructed 10.6 miles of bikeway trail through Austintown Township, Ohio, the City of Canfield, Ohio, and Canfield Township, Ohio upon such abandoned railroad line purchased by Mill Creek, which construction comprised Phases I and II of the Mill Creek MetroParks Bikeway project (the "Bikeway"), creating a linear park over the northern two-thirds of Mahoning County.

As part of extending the Bikeway across the southern one-third of Mahoning County, Mill Creek filed its Petition to acquire a portion of and temporary easement across the Subject Property, and to enter upon the property being appropriated for the purposes of completing a portion of a 6.4-mile extension of the existing Mill Creek MetroParks Bikeway in Mahoning County, Ohio, which will provide a safe, uniformly designed, multi-use, off-road trail facility, and linear park dedicated to public transportation and recreational purposes (herein "Phase III"). On September 10, 2018, Mill Creek passed Resolution, R-18-14, whereby it was resolved that:

"...we deem it necessary and in the best public interest that the MetroParks be and hereby are authorized to complete Phase III of the Bikeway project."

A true and accurate copy of said resolution is attached to Mill Creek's Petition as Exhibit 3 (in the Appropriation Case) and incorporated herein.

Mill Creek's September 10, 2018 Resolution authorized it to consummate and complete all acquisition transactions as may be necessary to acquire the real property contemplated for inclusion in Phase III of the project or, in instances where agreement cannot be reached with the landowner, that Mill Creek by and through its legal counsel be authorized to appropriate such property by its power of eminent domain under R.C. § 1545.11 and to initiate legal proceedings pursuant to Ohio Revised Code Chapter 163.

Mill Creek complied with the requirements of R.C. §§ 163.04 and 163.041 by providing and delivering a written Notice of Intent to Acquire and Good Faith Offer to Relator at least thirty (30) days prior to the filing of the Petition. True and accurate copies of Mill Creek's Notice of Intent to Acquire and Good Faith Offer are attached to Mill Creek's Petition as Exhibit 5. Mill Creek also sent an Appropriation Letter to Relator, a true and accurate copy of which is attached to Mill Creek's Petition as Exhibit 6 (in the Appropriation Case).

An independent appraiser engaged by Mill Creek determined the fair market value of the Subject Property and the rights, title, interests, and estates therein, to be appropriated, and damages, if any, to the residue thereof, to be Six Thousand Seven Hundred Forty and 00/100 Dollars (\$6,740.00), which is the amount that Mill Creek offered Relator as the fair market value of the Subject Property.

This case had been previously scheduled for trial when the Governor signed H.B. 110 on June 30, 2021, which contained Section 715.05 that was recently adopted by the Ohio General Assembly (the "Legislation"). The trial was postponed in 2021 after Relator filed a Motion for Judgment on the Pleadings based on the Legislation, which in its entirety states as follows:

- (A) As used in this section, "recreational trail" means a public trail that is used for hiking, bicycling, horseback riding, ski touring, canoeing, or other nonmotorized forms of recreational travel.**
- (B) No park district created under Chapter 1545. of the Revised Code and located in a county with not less than 220,000 and not more than 240,000 residents according to the most recent available federal decennial census shall appropriate property pursuant to Chapter 163 of the Revised Code for the purpose of providing a recreational trail.**
- (C) This section expires on July 1, 2026.**

Although Relator states that the Legislation amends R.C. § 1545.11, a review of the currently published Revised Code reflects that it does not. R.C. 1545.11 continues to permit a

board of park commissioners, such as Mill Creek, to acquire real property through the appropriation process outlined “...in sections 163.01 to 163.22, inclusive, of the Revised Code.” Nonetheless, while the Legislation does exist, it does not restrict Mill Creek’s authority in the Appropriation Case as decided by the Trial Court.

The Trial Court determined that the Legislation is not retroactive and has no application to pending cases such as the pending Appropriation Case that Mill Creek filed on January 24, 2019.¹ The Trial Court relied upon statutory law and case law to support its conclusion to overrule the Relator’s Motion for Judgment on the Pleadings. The Trial Court indicated that Ohio Rev. Code Ann. § 1.48 provides that “A statute is presumed to be prospective in its operation unless expressly made retrospective. Statutes are presumed to apply prospectively unless expressly declared to be retroactive.” *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, 871 N.E.2d 1167, ¶ 9; citing *R.C. § 1.48*. The Trial Court explained that “If a statute is silent as to whether it has retroactive application, it can only be applied prospectively.” *State v. Williams*, 103 Ohio St.3d 112, 2004 Ohio 4747, P9, 814 N.E.2d 818. The expressed legislative intent must be clear. *Id.* at P8. Clear intent is expressed by words such as "retroactive," "retrospective" or "applies to pending cases." *Scibelli v. Pannunzio*, 7th Dist. Mahoning No. 05 MA 150, 2006-Ohio-5652, ¶ 148. The Trial Court found no such words in the Legislation and re-set the trial to start on January 25, 2022. The trial of the Appropriation Case should not be disrupted by Relator’s misplaced Petition in Prohibition.

¹ Contrary to the Relator’s contention set forth in Paragraph 12 of his Petition in Prohibition, the case pending in the Mahoning County Court of Common Pleas styled as *The Board of Commissioners of the Mill Creek Metropolitan Park District v. Elizabeth Chahine*, et al., Case No. 2019 CV 00371, was never stayed. In fact, the court recently issued its Judgment Entry on January 12, 2021, which also overruled the land owner’s motion to dismiss the appropriation matter and likewise determined that the Legislation is not retroactive and has no application to the pending case.

III. Law and Argument

A. Writ of Prohibition

A writ of prohibition is an extraordinary judicial writ issued by a court of superior jurisdiction directing an inferior tribunal to cease abusing or usurping its judicial functions. *State ex rel. Jones v. Suster*, 84 Ohio St. 3d 70, 73, 1998 Ohio 275, 701 N.E.2d 1002. The purpose of a writ of prohibition is to restrain inferior courts from exceeding their jurisdiction. *Id.* A relator is only entitled to a writ of prohibition if he can prove: 1) the lower court is about to exercise judicial authority; 2) the exercise of authority is not authorized by law; and 3) the relator has no adequate remedy in the ordinary course of law if a writ of prohibition is denied. *State ex rel. Keenan v. Calabrese*, 69 Ohio St.3d 176, 178, 631 N.E.2d 119 (1994). Thus, a writ of prohibition only examines the subject matter jurisdiction of the lower court. *State ex rel. Eaton Corp. v. Lancaster*, 40 Ohio St.3d 404, 409, 534 N.E.2d 46 (1988); *Jones* at 73. If the court has subject matter jurisdiction, prohibition is not available to correct an erroneous decision or as a remedy for an abuse of discretion. *Eaton Corp.* at 409.

There is no dispute here that the Trial Court has subject matter jurisdiction over appropriation cases. Relator's Petition does not challenge the Trial Court's subject matter jurisdiction to try appropriation cases. Relator only challenges such jurisdiction in this Appropriation Case based on recent Legislation, which is alleged by Relator to restrict Mill Creek's authority to appropriate property. Prohibition is not available to Relator.

A writ of prohibition should not issue unless the right to relief is clear. See *State ex rel. Kriss v. Richards*, 102 Ohio St. 455, 132 N.E. 23 (1921). In *State ex rel. Ellis v. McCabe*, 138 Ohio St. 417, 35 N.E.2d 571 (1941), the Court declared:

A writ of prohibition will not be issued unless it clearly appears that the court or tribunal whose action is sought to be prohibited has no

jurisdiction of the cause which it is attempting to adjudicate or is about to exceed its jurisdiction.

Id., syllabus at ¶ 3. In *State ex rel. Merior v. Court of Common Pleas of Tuscarawas Cty.*, 137 Ohio St. 273, 28 N.E.2d 641 (1940), the Court stated: “[b]ecause of its nature, the writ of prohibition is to be used with care and caution. The right thereto must be clear, and in a doubtful or borderline case its issuance should be refused.” *Id.* at 277, 28 N.E.2d at 643.

In compliance with Ohio's general policy, Courts have held that writs of prohibition should be viewed with an abundance of caution stating that “[a]bsent 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 at law by appeal.” *Brooks v. Gaul*, 89 Ohio St.3d 202, 203, 2000-Ohio-133, 729 N.E.2d 752; *State ex rel. Enyart v. O'Neill*, 71 Ohio St.3d 655, 656, 646 N.E.2d 1110, 1112 (1995). Relator does not challenge the Trial Court's subject matter jurisdiction to try appropriation cases, only this Appropriation Case based on recent Legislation, which is alleged by Relator to restrict Mill Creek's authority to appropriate property. Prohibition is not available to Relator.

“Dismissal of [a] prohibition complaint for failure to state a claim upon which relief can be granted is appropriate if, after presuming the truth of all factual allegations of the complaint and making all reasonable inferences in [the relator's] favor, it appears beyond doubt that he can prove no set of facts entitling him to the requested extraordinary writ of prohibition.” *State ex rel. Hemsley v. Unruh*, 128 Ohio St.3d 307, 2011-Ohio-226, 943 N.E.2d 1014, ¶ 8.

1. Subject Matter Jurisdiction

Subject matter jurisdiction “connotes the power to hear and decide a case upon its merits[.]” *Morrison v. Steiner*, 32 Ohio St.2d 86, 290 N.E.2d 841 (1972), paragraph one of the syllabus. See, also, *Nielsen v. Ford Motor Co*, 113 Ohio App.3d 495, 499, 681 N.E.2d 470

(1996), citing *20 American Jurisprudence 2d* (1995), Courts, § 70 (stating that subject matter jurisdiction is the power of a court to hear, decide, and render a valid, enforceable final judgment in an action). “Subject matter jurisdiction focuses on the court as a forum and on the case as one of a class of cases, not on the particular facts of a case or the particular tribunal that hears the case.” *State v. Swiger*, 125 Ohio App.3d 456, 462, 708 N.E.2d 1033 (1998). Further, **“jurisdiction does not relate to the rights of the parties, but to the power of the court.”** (*Emphasis added.*) *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 75, 1998 Ohio 275, 701 N.E.2d 1002 (1998).

Relator does not challenge the Trial Court’s subject matter jurisdiction to try appropriation cases, only this Appropriation Case based on recent Legislation, which is alleged by Relator to restrict Mill Creek’s authority to appropriate property. Relator’s claims are about the rights of the parties, not the power of the court. Jurisdiction does not relate to the rights of the parties. Prohibition is not available to Relator.

“Subject matter jurisdiction is the power of a court to entertain and adjudicate a particular class of cases” and “is determined without regard to the rights of the individual parties involved in a particular case.” *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275 at ¶ 19, 21 N.E.3d 1040. A court’s jurisdiction over a particular case pertains to “the court’s authority to proceed or rule on a case that is within the court’s subject-matter jurisdiction.” *Id.*

A party, such as the Relator in the instant matter, that contests a court’s jurisdiction over a particular case does not call into question the subject-matter jurisdiction of the court. *Id.* at ¶ 22-23; see also *State ex rel. Novak, L.L.P. v. Ambrose*, 156 Ohio St.3d 425, 2019-Ohio-1329, 128 N.E.3d 209, ¶ 12 (when a court possesses general subject-matter jurisdiction, an error in that court’s exercise of jurisdiction over a particular case may be appealed). Relator does not

challenge the Trial Court's subject matter jurisdiction to try appropriation cases, only this particular Appropriation Case based on recent Legislation, which is alleged by Relator to restrict Mill Creek's authority to appropriate property. Prohibition is not available to Relator.

In determining whether relief in prohibition is warranted, the court need not actually decide the underlying jurisdictional issue so long as the court is satisfied that jurisdiction is not patently and unambiguously lacking. See *State ex rel. Shimko v. McMonagle*, 92 Ohio St.3d 426, 431, 751 N.E.2d 472, 477 (2001). Relator has failed to present a "patent and unambiguous" lack of jurisdiction in the trial court in this matter, and as such, this Writ of Prohibition should properly be denied as the Trial Court has subject jurisdiction over the Appropriation Case.

2. Writ of Prohibition is not a Substitute for an Appeal

A writ of prohibition is not a substitute for an appeal. *State ex rel. Crebs v. Wayne Cty. Court of Common Pleas*, 38 Ohio St.2d 51, 52, 67 O.O.2d 61, 309 N.E.2d 926, 927 (1974); *State ex rel. Winnefeld v. Butler Cty. Court of Common Pleas*, 159 Ohio St. 225, 50 O.O. 263, 112 N.E.2d 27 (1953). In this matter, Relator has an adequate remedy in the ordinary course of law. He can file an appeal when appropriate.

In essence, Relator's Petition argues that the Trial Court either abused its discretion or erred as a matter of law in refusing to grant his motions to dismiss the Appropriation Case or stay it. It is notable that Relator filed for a Writ of Prohibition only after his motions failed. His attempted end-around the scheduled jury trial and any subsequent appellate process through a writ of prohibition should fail as well. It is axiomatic that "[A writ of prohibition] is not an appropriate remedy for the correction of errors and does not lie to prevent an erroneous decision in a case which the court is authorized to adjudicate." *Barton v. Butler Cty. Bd. of Elections*, 39 Ohio St.3d 291, 292, 530 N.E.2d 871 (1988), quoting *Kelley v. State ex rel. Gellner*, 94 Ohio St.

331, 114 N.E. 255 (1916), paragraph three of the syllabus. “Therefore, prohibition is not an appropriate remedy to correct alleged errors or prevent an allegedly erroneous decision stemming from such a review.” *Id.*

IV. Conclusion

The Petition for Temporary and Permanent Writs of Prohibition must be denied. For all the foregoing reasons, Relator is not entitled to this extraordinary remedy. Relator has not demonstrated that Judge Sweeney exercised or will exercise judicial power that is unauthorized by law, nor can he establish that denying the writs would result in injury for which no adequate remedy exists in the ordinary course of law. See *State ex rel. Greene Cty. Bd. of Commrs. v. O’Diam*, 156 Ohio St.3d 458, 2019-Ohio-1676, 129 N.E.3d 393, ¶ 16.

WHEREFORE, based on all the foregoing reasons, Additional Party, Mill Creek, respectfully urges the Supreme Court of Ohio to dismiss Relator’s Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a copy of the foregoing was served via the Court's electronic transmission system on this 14th day of January 2022, upon the following:

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