

IN THE SUPREME COURT OF OHIO

VALERIE RICCARDI

Relator,

v.

SUPREME COURT OF OHIO, DOMESTIC
RELATIONS DIVISION, LORAIN COUNTY,
OHIO

and

SUPREME COURT OF OHIO, DOMESTIC
RELATIONS DIVISION, LORAIN COUNTY,
OHIO

Respondents.

CASE NO. 2023-0830

Original Action – Writ of Prohibition

RELATOR'S BRIEF IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

I. Preliminary Statement

The Court of Common Pleas, Lorain County, Domestic Relations Division patently and unambiguously lacks subject matter jurisdiction but nevertheless exercised its judicial power to the Relator's detriment and consequently, to the detriment of her child. Therefore, Relator need not demonstrate that she is without an adequate remedy at law.

II. Argument

1. Respondents claim the domestic relations court has subject matter jurisdiction.

Respondents do not argue that any of the salient facts presented to this court are inaccurate.

Respondents however, argue that the Domestic Relations Court has general subject matter jurisdiction over “all domestic relations matters” including those brought under the statutory scheme outlined in R.C. Ch. 3109, and therefore Relator must demonstrate that she has no adequate remedy at law in order to prevail. This argument fails however, because it is the more specific statutory sections contained within Chapter 3109 that preclude the Domestic Relations court of subject matter jurisdiction in this case.

“But even when a statute grants a court jurisdiction, a writ of prohibition can still be proper when a *more specific statute* ‘patently and unambiguously divests a court of its basic statutory jurisdiction to proceed in a matter.’” *Fradette v. Gold*, 157 Ohio St.3d 13, 14, 2019-Ohio-1959, 131 N.E.3d 12 *citing State ex rel. Kaylor v. Bruening*, 80 Ohio St.3d 142, 145, 1997- Ohio 350, 684 N.E.2d 1228 (1997).; *see also State ex rel. Novak , L.L.P. v. Ambrose*, 156 Ohio St.3d 425, 428, 2019-Ohio-1329, ¶ 13, 128 N.E.3d 209.

Only when certain statutorily enumerated circumstances exist may the domestic relations court exercise subject matter jurisdiction over a grandparent visitation application pursuant to R.C. §3109.051. NONE of those statutorily enumerated circumstances exist in this case. Respondents do not dispute that the visitation order *did not* arise from a divorce, dissolution, legal separation or annulment. Respondents do not dispute that the visitation *was not* granted incident to a child support matter. Thus, R.C. §3109.051(B)(1) does not grant the domestic relations court jurisdiction to decide the Plaintiff’s complaint for grandparent visitation.

Respondents argue that it is apparent that Yee premised her Complaint for visitation upon R.C. §3109.12. Yet, the Complaint does not cite or reference any authoritative source to invoke the domestic relations court's jurisdiction. Appendix, Ex. A, RICC000001-05. Furthermore, in his October 6, 2022 Decision, Magistrate Butler stated that “[t]he Court has considered the provisions of Ohio Revised Code section 3109.051 in arriving at this decision.” Appendix, Ex. B, RICC000006-08. Clearly the domestic relations court did not exercise its jurisdiction pursuant to R.C. 3109.12. Even if it did, it would be improper.

Pursuant to R.C. §3109.12, a grandparent may obtain reasonable visitation with their grandchild IF mother and father were not married at the time of the birth of the child and only if father has, 1) *acknowledged the child and that acknowledgment has become final*, 2) *father files a complaint* of the appropriate jurisdiction and in the appropriate venue to grant him reasonable parenting time rights with the child, and 3) *then, and only then* the paternal grandparent(s) file a complaint requesting that the court grant them reasonable visitation. *See* R.C. §3109.12.

Putative father never filed an acknowledgment of paternity affidavit form. Therefore, there is no final acknowledgment. Plaintiff Carol Yee, not father, moved the court for “Grandparent’s Rights”. Therefore, if the court did exercise its jurisdiction pursuant to R.C. §3109.12, the court’s decision and judgment must be vacated for a very apparent and unambiguous lack of jurisdiction.

2. Respondents claim that Riccardi has an adequate remedy in the ordinary course of law.

If the trial judge's lack of jurisdiction is patent and unambiguous, a writ of prohibition will lie to stop the use of judicial power even if: (1) the trial judge has not had the opportunity to consider the jurisdiction issue; and (2) *an adequate remedy through an appeal exists. State ex rel.*

Tubbs Jones v. Suster (1998), 84 Ohio St.3d 70, 74. Therefore, if the lack of jurisdiction is obvious in nature, a relator need only satisfy only the first two elements of a prohibition claim.

As stated above, the domestic relations court clearly and unambiguously lacks jurisdiction in this matter. As a matter of law, the facts surrounding the underlying matter preclude the domestic relations court from exercising jurisdiction.

Respondents claim that Relator is not arguing a lack of jurisdiction, but instead filed her complaint because the domestic relations court made an erroneous decision. The first sentence in Relator's complaint, within the "Preliminary Statement" reads, "[r]elator, Valerie Riccardi has filed the instant Complaint for relief because the Court of Common Pleas, Lorain County, Domestic Relations Division *patently and unambiguously lacked jurisdiction* but nevertheless exercised its judicial power to the Relator's detriment and consequently, to the detriment of her child. (emphasis added). Relator is well aware that in order to invoke this Court's original jurisdiction her claim must be premised upon Article IV, §2(B)(1)(d) of the Ohio Constitution, and her complaint states as much.

Respondents argue that because Relator called attention to Yee's failure to meet any of the statutory prerequisites to invoke the domestic relations court's jurisdiction, including R.C. §3109.12 that she is arguing the merits of the case, rather than arguing lack of jurisdiction. This clearly is not true. It would be impossible to demonstrate that the domestic relations court lacks jurisdiction without any account of the facts. Further, as stated above, the underlying plaintiff's complaint is devoid of authority and Relator is in the position to have to argue any possible authority upon which jurisdiction could be premised. And, when accounting for all possible jurisdictional premises, it is clear that the domestic relations court patently and unambiguously lacks jurisdiction.

Finally, Respondents claim that Relator's complaint must be dismissed because she has an adequate remedy at law. This argument must also fail because the domestic relations court patently and unambiguously lacks jurisdiction over the matter and Relator need not demonstrate that she lacks an adequate remedy at law. *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70 at 74.

III. Prayer for Relief

For the reasons set forth above, the Relator respectfully requests that this Honorable Court deny the Respondents' Motion to Dismiss and 1) issue a Writ of Prohibition prospectively preventing the Respondents from exercising judicial authority over Riccardi and her child in the underlying matter and 2) issue a Writ of Prohibition retroactively preventing the Respondents from exercising judicial authority over Riccardi and her child from the moment that the Plaintiff's "Complaint for Grandparent Rights" was filed, together with any additional and further relief that this Honorable Court may deem just and proper.

Respectfully submitted,

DOOLEY, GEMBALA, McLAUGHLIN & PECORA CO. LPA.



Anthony R. Pecora (0069660)

Douglas R. Henry (0081615)

5455 Detroit Road

Sheffield Village, Ohio 44054

Telephone: (440) 930-4001

Facsimile: (440) 934-7208

Email: apecora@dooleygembala.com

dhenry@dooleygembala.com

Attorneys for Relator

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Brief in Opposition has been sent by electronic mail to the following this 23rd day of July, 2023:

J.D. Tomlinson
Lorain County Prosecuting Attorney
Gregory Pelz II
Assistant Prosecuting Attorney
225 Court Street, 3rd Floor
Elyria, Ohio 44035
Greg.peltz@lcprosecutor.org
Counsel for Respondents



Douglas R. Henry, No. 0081615
An Attorney for Relator