

THE STATE EX REL. MARON, APPELLANT, v. CORRIGAN, JUDGE, APPELLEE.

[Cite as *State ex rel. Maron v. Corrigan*, 173 Ohio St.3d 55, 2023-Ohio-2556.]

Prohibition—Appellant failed to show that judge lacks jurisdiction under jurisdictional-priority rule to proceed in civil case filed against her—Court of appeals’ denial of writ affirmed.

(No. 2022-1495—Submitted May 16, 2023—Decided July 27, 2023.)

APPEAL from the Court of Appeals for Cuyahoga County,

No. 112130, 2022-Ohio-4406.

Per Curiam.

{¶ 1} Appellant, Jessica Maron, appeals the judgment of the Eighth District Court of Appeals denying her petition for a writ of prohibition. She argues that under the jurisdictional-priority rule, appellee, Judge Peter J. Corrigan, lacks jurisdiction to proceed in a civil case filed against her because the case involves property that may be subject to equitable division in a pending divorce case. We affirm the court of appeals’ judgment.

Background

{¶ 2} Jessica and her husband, Ari Maron, are parties to a divorce case pending in the Cuyahoga County Court of Common Pleas, Domestic Relations Division. Ari filed the divorce case in September 2020.

{¶ 3} In September 2022, United Twenty-Fifth Building, L.L.C., sued Jessica in the Cuyahoga County Court of Common Pleas, General Division. United Twenty-Fifth alleges that Jessica is interfering with an easement involving a multistory building in Cleveland consisting of five parcels. United Twenty-Fifth owns two of the parcels (the first and second floors), and Jessica and Ari own the other three parcels (a third-floor residence; the elevator, lobby, and stairwell; and a parking

area). The parcels are all subject to a declaration of easement granting the owners of each parcel certain rights of access to the other parcels. Ari and his brother each have a 50 percent ownership interest in United Twenty-Fifth. Jessica alleges that she has an equitable interest in Ari's half of the company.

{¶ 4} Jessica and her minor children reside on the third floor of the building. She alleges that Ari, through United Twenty-Fifth, has engaged contractors to work in the building and that the workers have entered her residence. In October 2022, the domestic-relations court issued an ex parte domestic-violence civil protection order enjoining Ari from entering Jessica's residence or interfering with her use of it. Also in October 2022, Jessica filed a motion in the divorce case asking the domestic-relations court to issue a temporary restraining order enjoining Ari from interfering with her use of the residence. She later filed a motion asking the domestic-relations court to add United Twenty-Fifth as a party defendant in the divorce case.

{¶ 5} In its lawsuit against Jessica, United Twenty-Fifth alleges that Jessica is violating the easement by preventing access to the building's elevator, lobby, and stairwell. United Twenty-Fifth further alleges that Jessica's actions are delaying the construction of a restaurant on the first floor of the building. United Twenty-Fifth seeks a declaratory judgment and a preliminary injunction and asserts claims alleging tortious interference with contract, breach of contract, and trespass. Judge Corrigan, who is presiding over United Twenty-Fifth's case, commenced a preliminary-injunction hearing in October 2022. The hearing had not concluded by the time Jessica filed her petition for a writ of prohibition.

{¶ 6} Jessica filed her prohibition petition in the court of appeals seeking to prevent Judge Corrigan from exercising jurisdiction in United Twenty-Fifth's case. She argues that under the jurisdictional-priority rule, Judge Corrigan patently and unambiguously lacks jurisdiction to proceed, because the domestic-relations court

is already exercising jurisdiction over the division of marital property in the divorce case.

{¶ 7} The court of appeals denied the writ, and Jessica has appealed.

Analysis

{¶ 8} To be entitled to a writ of prohibition, Jessica must show that Judge Corrigan has exercised or is about to exercise judicial power, that the judge lacks authority to do so, and that denial of the writ will result in an injury for which no other adequate remedy exists in the ordinary course of the law. *State ex rel. Elder v. Campese*, 144 Ohio St.3d 89, 2015-Ohio-3628, 40 N.E.3d 1138, ¶ 13. If Judge Corrigan patently and unambiguously lacks jurisdiction, Jessica need not establish that she lacks an adequate remedy in the ordinary course of the law. *Id.*

{¶ 9} There is no question that Judge Corrigan has exercised and will continue to exercise judicial power in United Twenty-Fifth’s case against Jessica. And Jessica’s only theory is that Judge Corrigan lacks jurisdiction under the jurisdictional-priority rule. If the jurisdictional-priority rule applies, Judge Corrigan patently and unambiguously lacks jurisdiction. *State ex rel. Tri Eagle Fuels, L.L.C. v. Dawson*, 157 Ohio St.3d 20, 2019-Ohio-2011, 131 N.E.3d 20, ¶ 9. The applicability of the rule, therefore, is the only issue we must decide. Whether a court has jurisdiction over a matter is a legal question we review de novo. *State v. Hudson*, 169 Ohio St.3d 216, 2022-Ohio-1435, 203 N.E.3d 658, ¶ 19.

{¶ 10} Jessica does not question Judge Corrigan’s general jurisdiction over the types of claims pending in United Twenty-Fifth’s case. “When a court has the constitutional or statutory power to adjudicate a particular class or type of case, that court has subject-matter jurisdiction.” *Ostaneck v. Ostaneck*, 166 Ohio St.3d 1, 2021-Ohio-2319, 181 N.E.3d 1162, ¶ 36. Instead, Jessica argues that Judge Corrigan patently and unambiguously lacks jurisdiction under the jurisdictional-priority rule, which provides that “[a]s between courts of concurrent jurisdiction, the tribunal whose power is first invoked by the institution of proper proceedings acquires

jurisdiction, to the exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties,” *State ex rel. Phillips v. Polcar*, 50 Ohio St.2d 279, 364 N.E.2d 33 (1977), syllabus.

{¶ 11} “The jurisdictional-priority rule generally requires ‘the claims and parties [to] be the same in both cases, so “[i]f the second case is not for the same cause of action, nor between the same parties, the former suit will not prevent the latter.” ’ ” (Brackets added in *Dunlap*.) *State ex rel. Hasselbach v. Sandusky Cty. Bd. of Elections*, 157 Ohio St.3d 433, 2019-Ohio-3751, 137 N.E.3d 1128, ¶ 9, quoting *State ex rel. Dunlap v. Sarko*, 135 Ohio St.3d 171, 2013-Ohio-67, 985 N.E.2d 450, ¶ 10, quoting *State ex rel. Judson v. Spahr*, 33 Ohio St.3d 111, 113, 515 N.E.2d 911 (1987). Jessica does not argue that the divorce case and United Twenty-Fifth’s case involve identical claims, but she invokes an exception to that requirement of the rule, arguing that the two cases present the same “whole issue.” We have said that “the jurisdictional-priority rule can apply even when the causes of action and relief requested are not exactly the same, as long as the actions present part of the same ‘whole issue.’ ” *Dunlap* at ¶ 11, quoting *State ex rel. Otten v. Henderson*, 129 Ohio St.3d 453, 2011-Ohio-4082, 953 N.E.2d 809, ¶ 29, and *State ex rel. Sellers v. Gerken*, 72 Ohio St.3d 115, 117, 647 N.E.2d 807 (1995).

{¶ 12} We have applied the whole-issue exception “only in the narrow circumstances in which the two cases raise the exact same legal claim or involve resolution of the same issue.” *Tri Eagle Fuels*, 157 Ohio St.3d 20, 2019-Ohio-2011, 131 N.E.3d 20, at ¶ 14. In *Tri Eagle Fuels*, we declined to “expand” the exception simply because two actions involved the same property. *Id.* We held that a court had jurisdiction to proceed in a landlord’s forcible-entry-and-detainer action even though the tenant’s previously filed breach-of-lease action remained pending. *Id.* at ¶ 4-5, 15. Similarly, in *Hasselbach*, we held that the whole-issue exception did not apply when two actions involved the same zoning ordinance but sought “different relief

and involve[d] different theories, different causes of action, and a different defendant/respondent.” *Hasselbach* at ¶ 10.

{¶ 13} Jessica has not shown that the whole-issue exception applies here. She argues that the divorce case and United Twenty-Fifth’s case involve the same whole issue because, according to her, United Twenty-Fifth is seeking relief that would “directly interfer[e] with the Domestic Relations Court’s ability to issue a division of property.” But she has failed to allege facts supporting that argument. The main issue in United Twenty-Fifth’s case is whether Jessica is in breach of an easement. Jessica has not shown how Judge Corrigan’s adjudication of that issue will conflict with the domestic-relations court’s identification and division of marital property.

{¶ 14} Jessica’s additional arguments are unpersuasive. She argues that we should prohibit Judge Corrigan from exercising jurisdiction over United Twenty-Fifth’s case because if the domestic-relations court were to award Ari’s interest in United Twenty-Fifth to Jessica, the underlying dispute over the easement would become moot. This argument is not just speculative; it also fails to establish any real connection between the issues in the two cases. The division of marital property Jessica seeks—awarding Ari’s interest in United Twenty-Fifth to Jessica—would not resolve the legal issues presented in United Twenty-Fifth’s case.

{¶ 15} Jessica also argues that her property rights, “including the right to exclude others from her property,” are pending in both the divorce case and United Twenty-Fifth’s case. Although Jessica does not elaborate on this argument, she is presumably referring to the motion she filed in the domestic-relations court seeking a temporary restraining order preventing Ari “from interfering, restricting, and/or breaching [her] use and enjoyment of the marital residence.” Jessica filed that motion in October 2022—more than two weeks *after* United Twenty-Fifth filed its complaint against her. Thus, claims about United Twenty-Fifth’s right to access

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the marital residence (and conversely, Jessica’s right to exclude access) were first raised in United Twenty-Fifth’s case, not in the divorce case. Jessica has not shown that the jurisdictional-priority rule applies under these circumstances.

Conclusion

{¶ 16} For the above reasons, we affirm the judgment of the Eighth District Court of Appeals.

Judgment affirmed.

KENNEDY, C.J., and FISCHER, DEWINE, DONNELLY, STEWART, BRUNNER, and DETERS, JJ., concur.

Stafford Law Co., L.P.A., Joseph G. Stafford, Nicole A. Cruz, and Kelley R. Tauring, for appellant.

Michael C. O’Malley, Cuyahoga County Prosecuting Attorney, and Matthew T. Fitzsimmons IV, Assistant Prosecuting Attorney, for appellee.
