

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Melissa Smith ¹ ,	:	
Relator,	:	
v.	:	No. 23AP-736
Jeffrey D. Mackey, Judge,	:	(REGULAR CALENDAR)
Franklin County Probate Court,	:	
Respondent.	:	

DECISION

Rendered on September 24, 2024

On brief: *Melissa Smith*, pro se.

On brief: *G. Gary Tyack*, Prosecuting Attorney, and
Brandon Coy Hendrix, for respondent.

IN PROHIBITION
ON OBJECTION TO THE MAGISTRATE’S DECISION

PER CURIAM

{¶ 1} This action stems from an estate administration matter commenced under Franklin County Probate case No. 620246 concerning the estate of Charles Minter (the “probate case”). In opposing the application of Mr. Minter’s son, David Minter, to be appointed special administrator of an intestate estate, Relator, Melissa Smith (also known as “Melissa Smith” and “Mudd”), filed, pro se, a petition requesting she be appointed executor instead. Attached to her application was the purported will of Charles Minter. Following a hearing on the validity of the alleged will, respondent, Jeffrey D. Mackey,

¹ Relator initiated this case under the name “Melissa Smith” but has also proceeded in the case below under the names “Melissa Smith” and “Mudd.” Because this case was docketed with “Melissa Smith” as the named relator, our decision is captioned as such.

Judge, Franklin County Probate Court, ruled to disallow its admission in the probate matter because it was not formalized in the manner required by R.C. 2107.18 and 2107.03.

{¶ 2} Ms. Smith now seeks a writ of prohibition from this court preventing respondent from taking any further action in the probate case until this matter is “finally resolved, according to [l]aw.” (Dec. 8, 2023 Compl. at 3.) Respondent subsequently moved to dismiss Ms. Smith’s complaint for a writ of prohibition under Civ.R. 12(B)(6) for failure to state a claim upon which relief could be granted.

{¶ 3} Pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals, we referred this matter to a magistrate who issued the appended decision, including findings of fact and conclusions of law, on April 12, 2024. The magistrate determined that Ms. Smith’s complaint failed to state a cause of action in prohibition and, accordingly, has recommended that we grant respondent’s motion to dismiss and dismiss the complaint. (Apr. 12, 2024 Appended Mag.’s Decision at ¶ 22-23.)

{¶ 4} Ms. Smith now broadly objects to the magistrate’s decision. In evaluating the propriety of her objection, we must independently review the objected to matters and evaluate whether “the magistrate has properly determined the factual issues and appropriately applied the law.” Civ.R. 53(D)(4)(d).

I. ANALYSIS

{¶ 5} “Prohibition is an extraordinary writ issued to prevent a court or tribunal from usurping or exercising judicial power or judicial functions which have not been conferred upon it by law.” *State ex rel. Daily Reporter v. Court of Common Pleas of Franklin Cty.*, 56 Ohio St.3d 145 (1990). “The writ of prohibition is a high prerogative writ to be used with great caution in the furtherance of justice and only where there is no other regular, ordinary, and adequate remedy.” *State ex rel. Stark v. Summit Cty. Court of Common Pleas*, 31 Ohio St.3d 324, 325 (1987).

{¶ 6} To be entitled to a writ of prohibition, Ms. Smith must establish (1) Judge Mackey is about to or has exercised judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law. *See State ex rel. Fiser v. Kolesar*, 164 Ohio St.3d 1, 2020-Ohio-5483, ¶ 7, quoting *State ex rel. Balas-Bratton v. Husted*, 138 Ohio St.3d 527, 2014-Ohio-1406, ¶ 15.

{¶ 7} The absence of an adequate remedy at law is not a required element if it can be shown that the trial court patently and unambiguously lacks jurisdiction. *State ex rel. Martre v. Cheney*, 174 Ohio St.3d 254, 2023-Ohio-4594, ¶ 17, citing *State ex rel. Jones v. Paschke*, 168 Ohio St.3d 93, 2022-Ohio-2427, ¶ 6. If a trial court does not patently and unambiguously lack jurisdiction, however, a direct appeal is generally “considered an adequate remedy that will preclude a writ of prohibition.” *State ex rel. Smith v. Hall*, 145 Ohio St.3d 473, 2016-Ohio-1052, ¶ 8.

{¶ 8} “ ‘[I]n order to dismiss a complaint for a writ under Civ.R. 12(B)(6), it must appear beyond doubt from the complaint, after presuming the truth of all material factual allegations and making all reasonable inferences in favor of the relator, that the relator can prove no set of facts warranting extraordinary relief.’ ” *State ex rel. Squire v. Phipps*, 10th Dist. No. 23AP-137, 2023-Ohio-3950, ¶ 2, quoting *State ex rel. Lewis v. Holbrook*, 10th Dist. No. 07AP-5, 2007-Ohio-4459, ¶ 7, citing *State ex rel. Hunter v. Patterson*, 75 Ohio St.3d 512, 513-14 (1996).

{¶ 9} In her objection to the magistrate’s decision, Ms. Smith states the following:

Relator cites to statute and Case law as to position have held and contends at present to wit. No jurisdiction obtained of Relator so all judgements and court actions are void ab inito, and this court precedent decision in ***Shannon Village Homeowners Assn. v. Miller, 2023-1499; pg5 at 10***(Judgement rendered by a court that has not acquired personal jurisdiction over a defendant is void, and not merely voidable. ***Void ab inito***. See 60B Motion; pg2. and fraud by the court and on the court satisfy the requisite for right to grant of Writ as well as the unauthorized exercised of Respondent judicial powers. Lastly, the refusal out-right on December 8th, 2023 by the Probate Court Magistrate K to file Relator’s direct appeal for want of consideration as they do not accept or recognize in forma pauperis motions eliminated the adequate course in remedy law—direct appeal. See Declaration #27.

(Sic passim.) (Emphasis sic.) (May 24, 2024 Relator’s Obj.)

{¶ 10} Civ.R. 53(D)(3)(b)(ii) requires “[a]n objection to a magistrate’s decision * * * be specific and state with particularity all grounds for objection.” On review, we find that Ms. Smith’s objection lacks specificity and fails to state with particularity the grounds for objection. Instead, Ms. Smith restates the same arguments presented in her complaint without engaging in the legal standards germane to the magistrate’s decision

recommending dismissal under Civ.R. 12(B)(6). For these reasons, Ms. Smith's objection cannot be construed as specific or stated with particularity. *See, e.g., Shihab & Assocs. Co. v. Ohio DOT*, 168 Ohio App.3d 405, 2006-Ohio-4456, ¶ 15 (10th Dist.), citing *State ex rel. Weimer v. Zayre Cent. Corp.*, 10th Dist. No. 02AP-182, 2002-Ohio-6737 (“[W]here a party merely paraphrases arguments already made but does not reference the magistrate's decision as a basis for a proper challenge, the objections are not sufficiently specific or particular.”). As such, it is not well-taken. Nonetheless, we still must determine whether “the magistrate has properly determined the factual issues and appropriately applied the law” in rendering his decision recommending that we grant respondent's motion to dismiss Ms. Smith's complaint for a writ of prohibition, pursuant to Civ.R. 12(B)(6), for failure to state a claim upon which relief can be granted. *See* Civ.R. 53(D)(4)(d).

{¶ 11} In this case, the magistrate found that respondent entered the judgment Ms. Smith takes issue with on November 8, 2023, and Ms. Smith did not commence a timely direct appeal from that judgment. On review of the record before us, we find no error in the magistrate's recitation of the facts. The magistrate then cited statutory authority and case law supporting his conclusions of law finding Ms. Smith had an adequate remedy at law—by way of a direct appeal of respondent's November 8, 2023 judgment—and rejecting Ms. Smith's contention that Judge Mackey patently and unambiguously lacks jurisdiction over the probate case. The magistrate further observed that a writ of prohibition is not a proper remedy to address Ms. Smith's claim of bias against respondent.

{¶ 12} Upon review of the magistrate's decision, an independent review of the record, and due consideration of Ms. Smith's objection, we find the magistrate has properly determined the pertinent facts and applied the appropriate law.

II. DISPOSITION

{¶ 13} Having found the magistrate properly applied the salient facts to the controlling law, we overrule Ms. Smith's objection, adopt the magistrate's decision, including the findings of fact and conclusions of law contained therein, as our own, grant respondent's motions to dismiss, and dismiss this action in prohibition pursuant to Civ.R. 12(B)(6). Furthermore, given this determination, we likewise deny Ms. Smith's emergency motion to stay execution of proceedings, two motions for leave to plead *instanter*, motion for mediation prehearing conference, and motion for *in camera* inspection.

*Objection overruled;
motion to dismiss granted;
cause dismissed.*

LUPER SCHUSTER, EDELSTEIN, and LELAND, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Melissa Smith,	:	
	:	
Relator,	:	
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v.	:	No. 23AP-736
	:	
Jeffrey D. Mackey, Judge,	:	(REGULAR CALENDAR)
Franklin County Probate Court,	:	
	:	
Respondent.	:	
	:	

MAGISTRATE'S DECISION

Rendered on April 12, 2024

Melissa Smith, pro se.

G. Gary Tyack, Prosecuting Attorney, and *Brandon Coy Hendrix*, for respondent.

IN PROHIBITION ON
RESPONDENT'S MOTIONS TO DISMISS

{¶ 14} Relator, Melissa Smith, has filed this original action requesting a writ of prohibition against respondent Jeffrey D. Mackey, Judge, Franklin County Probate Court, seeking an order preventing Judge Mackey from taking any further action or conducting any further proceedings in Franklin Probate No. 620246 ("probate case"), until the matter can be finally resolved, according to law. Respondent has filed a December 21, 2023, motion to dismiss relator's petition. Relator has also filed a February 20, 2024, emergency motion to stay execution of proceedings, a March 11, 2024, motion for leave to plead instant, and a March 28, 2024, motion for mediation prehearing conference.

Findings of Fact:

{¶ 15} 1. Respondent is a judge in the Franklin County Probate Court in Columbus, Ohio, and presides over the probate case.

{¶ 16} 2. Relator is involved in the probate case, as explained below.

{¶ 17} 3. The following general facts are gathered from pleadings in the probate case. The probate case involves the estate of Charles Minter, who died on October 6, 2022. On October 13, 2022, David Minter, the son of Charles Minter, filed an application for authority to administer estate, requesting to be appointed special administrator of Charles Minter's intestate estate. On October 26, 2022, relator filed an application for authority to administer estate, requesting to be appointed personal representative/executor, and attached a purported will of Charles Minter. The court declined to admit the will in the first instance, and scheduled a hearing on the issue pursuant to R.C. 2107.18 and 2107.181. On December 16, 2022, a probate court magistrate held a hearing to consider admission of the purported will to probate pursuant to R.C. 2107.18. On July 19, 2023, the magistrate issued a decision disallowing the alleged will, finding that the will was not formalized pursuant to R.C. 2107.18 and 2107.03 because it was not properly subscribed and attested by two witnesses. Relator filed an objection to the magistrate's decision. On November 8, 2023, respondent overruled relator's objection and adopted the magistrate's decision.

{¶ 18} 4. On December 8, 2023, relator filed her petition for writ of prohibition. Although the petition lacks clarity, she alleges that the procedure undertaken by respondent was in error, respondent erred when he denied her objections to the magistrate's decision, she was inappropriately escorted off the premises by a probate court bailiff, respondent used intemperate language in rulings that evinced bias, and the probate court had no jurisdiction to render decisions affecting her. Relator alleges that respondent is about to exercise judicial power that is unauthorized by law by continuing with the probate proceedings after overruling her objection to the magistrate's decision.

{¶ 19} 5. On December 21, 2023, respondent filed a motion to dismiss relator's petition pursuant to Civ.R. 12(B)(6).

{¶ 20} 6. On February 20, 2024, relator filed an emergency motion to stay execution of proceedings.

{¶ 21} 7. On March 11, 2024, relator filed a motion for leave to plead instant, seeking leave to file an untimely response to respondent's motion to dismiss.

{¶ 22} 8. On March 19, 2024, relator filed a motion for leave to plead *instanter*, seeking leave to file an untimely reply memorandum in support of emergency motion to stay execution of proceedings.

{¶ 23} 9. On March 28, 2024, relator filed a motion for mediation prehearing conference hearing.

Conclusions of Law:

{¶ 24} For the reasons that follow, it is this magistrate's decision that this court should grant respondent's motion to dismiss relator's petition for writ of prohibition.

{¶ 25} "The purpose of a writ of prohibition is to restrain inferior courts from exceeding their jurisdiction." *State ex rel. Roush v. Montgomery*, 156 Ohio St.3d 351, 2019-Ohio-932, ¶ 5, citing *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 73, (1998). To demonstrate entitlement to a writ of prohibition, a relator must establish that a respondent: (1) has exercised or is about to exercise judicial or quasi-judicial power, (2) that the exercise of that power is unauthorized by law, and (3) that denying the writ will cause injury for which no other adequate remedy in the ordinary course of the law exists. *Roush* at ¶ 5.

{¶ 26} "[W]here an inferior court patently and unambiguously lacks jurisdiction over the cause, prohibition will lie both to prevent the future unauthorized exercise of jurisdiction *and to correct the results of previous jurisdictionally unauthorized actions.*" *State ex rel. Litty v. Leskovyansky*, 77 Ohio St.3d 97, 98 (1996). Accord *State ex rel. Sartini v. Yost*, 96 Ohio St.3d 37, 2002-Ohio-3317, ¶ 24 (concluding the fact the judge had already exercised judicial power by granting a motion, such did not preclude the opposing party from obtaining a writ of prohibition, as prohibition will lie to correct the results of previous jurisdictionally unauthorized actions).

{¶ 27} A court may dismiss a complaint seeking a writ of prohibition pursuant to Civ.R. 12(B)(6) if, after all factual allegations in the complaint are presumed true and all reasonable inferences are made in relator's favor, it appears beyond doubt that relator could prove no set of facts entitling him or her to the requested extraordinary writ. *State ex rel. Turner v. Houk*, 112 Ohio St.3d 561, 2007-Ohio-814, ¶ 5. "Although factual allegations in the complaint are taken as true, 'unsupported conclusions of a complaint are not considered admitted * * * and are not sufficient to withstand a motion to dismiss.'" *Justice v. Jefferson-*

Pilot Life Ins., 10th Dist. No. 98AP-177 (Dec. 24, 1998), quoting *State ex rel. Hickman v. Capots*, 45 Ohio St.3d 324 (1989).

{¶ 28} The magistrate may take judicial notice of the pleadings and orders in related cases when these are not subject to reasonable dispute, at least insofar as they affect the present original action. *State ex rel. Nyamusevya v. Hawkins*, 10th Dist. No. 19AP-199, 2020-Ohio-2690, ¶ 33, citing Evid.R. 201(B); *State ex rel. Ohio Republican Party v. Fitzgerald*, 145 Ohio St.3d 92, 2015-Ohio-5056, ¶ 18; and *State ex rel. Womack v. Marsh*, 128 Ohio St.3d 303, 2011-Ohio-229, ¶ 8. Furthermore, a court may take judicial notice of pleadings that are readily accessible on the internet. *See Draughon v. Jenkins*, 4th Dist. No. 16CA3528, 2016-Ohio-5364, ¶ 26, citing *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, ¶ 8, 10 (a court may take judicial notice of appropriate matters, including judicial opinions and public records accessible from the internet, in determining a Civ.R. 12(B)(6) motion); and *Giannelli*, 1 Baldwin's Ohio Practice Evidence, Section 201.6 (3d Ed.2015) (noting that the rule generally precluding a court from taking judicial notice of other cases has been relaxed if the record is accessible on the internet). In addition, courts may take judicial notice of appropriate matters in determining a Civ.R. 12(B)(6) motion without converting it to a motion for summary judgment. *State ex rel. Findlay Publishing Co. v. Schroeder*, 76 Ohio St.3d 580-81 (1996); *Draughon* at ¶ 26 (a court may take judicial notice of appropriate matters, including judicial opinions and public records accessible from the internet, in determining a Civ.R. 12(B)(6) motion without converting it to a motion for summary judgment).

{¶ 29} In the present case, respondent argues that relator's writ of prohibition should be dismissed because she has an adequate remedy at law by way of direct appeal of the trial court's final judgment. In her petition, relator alleges that respondent erred when he denied her objections to the magistrate's decision, she was inappropriately escorted off the premises by a probate court bailiff, respondent used intemperate language in rulings that evinced bias, and the probate court had no jurisdiction to render decisions affecting her. Relator alleges that respondent is about to exercise judicial power that is unauthorized by law by continuing with the probate proceedings after overruling her objection to the magistrate's decision.

{¶ 30} The underlying basis of relator's arguments seems to be that respondent's decision to overrule her objections and reject the validity of the alleged will she submitted

to the court was erroneous. However, relator has an adequate remedy at law by way of direct appeal of respondent's decision. Any procedural or substantive error made by respondent with respect to the validity of the purported will submitted by relator can be addressed on direct appeal. *See, e.g., State ex rel. Rowan v. Probate Court*, 8th Dist. No. 85660, 2005-Ohio-756, ¶ 2 (finding that any procedural or substantive errors, as potentially committed by the probate court, can be addressed through a direct appeal), citing *Fraiberg v. Cuyahoga Cty. Court of Common Pleas*, 76 Ohio St.3d 374 (1996). Specifically, an order that refuses to probate a will is final and appealable. *In re Estate of Brown*, 11th Dist. No. 2020-T-0049, 2021-Ohio-655, ¶ 9 (pursuant to R.C. 2107.181, a final order refusing to probate the instrument may be reviewed on appeal). Thus, denials of admission under R.C. 2107.181 are appealable. *In re Estate of Weilert*, 10th Dist. No. 98AP-390 (Dec. 3, 1998). Therefore, respondent's decision to disallow the purported will submitted by relator was appealable, providing relator an adequate remedy at law by way of appeal.

{¶ 31} Furthermore, insofar as relator may be alleging that respondent lacked jurisdiction, relator fails to present any legally viable claim that respondent patently and unambiguously lacked jurisdiction over the cause. "The term 'jurisdiction' refers to the court's statutory or constitutional authority to hear a case." *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, ¶ 10. Subject-matter jurisdiction refers to the constitutional or statutory power of a court to adjudicate a case. *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, ¶ 23. A probate court, as a court of limited jurisdiction, does not have authority to act outside its statutory or constitutional authority. *Dumas v. Estate of Dumas*, 68 Ohio St.3d 405, 408 (1994), quoting *Saxton v. Seiberling*, 48 Ohio St. 554, 558-59 (1891). *See also State ex rel. Chester Twp. v. Grendell*, 147 Ohio St.3d 366, 2016-Ohio-1520, ¶ 24 (probate courts have broad authority to act with regard to matters within their jurisdiction).

{¶ 32} Probate courts have jurisdiction to appoint executors and administrators. *See* R.C. 2113.01; R.C. 2113.05; R.C. 2113.06. Pursuant to R.C. 2101.24(C), "[t]he probate court has plenary power at law and in equity to dispose fully of any matter that is properly before the court, unless the power is expressly otherwise limited or denied by a section of the Revised Code." Thus, with limited exception, R.C. 2101.24(C) endows probate courts with the authority to take whatever action is necessary to fully adjudicate any matter properly before them. *In re Cletus P. McCauley & Mary A. McCauley Irrevocable Trust*, 5th Dist. No. 2013CA00237, 2014-Ohio-3489, ¶ 43. In the present case, relator does not present any

legal theory as to why respondent did not have general subject-matter jurisdiction to adjudicate relator's application for authority to administer estate and hold a hearing pursuant to R.C. 2107.18 and 2107.181 on the validity of the purported will, and the magistrate finds that relator can prove no set of facts that would demonstrate respondent has exercised any power that is unauthorized by law.

{¶ 33} With regard to relator's claim of bias, as evinced by respondent's allegedly intemperate language and the fact that relator was escorted off the premises by court personnel, improper, biased, prejudiced, discourteous, undignified, impatient, and belligerent conduct does not relate to a patent and unambiguous lack of jurisdiction warranting a writ of prohibition. *See State ex rel. Corn v. Russo*, 133 Ohio App.3d 57 (8th Dist.1999), *rev'd on other grounds*, 90 Ohio St.3d 551 (2001); *Rolfe v. Galvin*, 8th Dist. No. 86471, 2006-Ohio-2457, ¶ 4 (a writ of prohibition is not the remedy for removing a biased judge, and broad accusations of bias, conspiracy, and corruption are insufficient to deprive the judge of jurisdiction over the case). Moreover, there are specific adequate remedies, such as an affidavit of disqualification filed with the Supreme Court of Ohio pursuant to R.C. 2701.03, to address issues of judicial bias and prejudice. *Id.* Therefore, any claim of respondent's bias is not a viable legal basis for a writ of prohibition.

{¶ 34} Accordingly, the magistrate recommends that this court grant respondent's motion to dismiss relator's petition for writ of prohibition. In addition, given this determination, the court should deny relator's emergency motion to stay execution of proceedings, relator's two motions for leave to plead instant, and relator's motion for mediation prehearing conference.

/S/ MAGISTRATE

THOMAS W. SCHOLL III

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b). A party may file written objections to the magistrate's decision within fourteen days of the filing of the decision.