[Cite as *K.S. v. Clark Cty. Probate Court*, 2026-Ohio-3998.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

K.S. Relator v. CLARK COUNTY PROBATE COURT THE HON. RICHARD P. CAREY Respondent	C.A. No. 2026-CA-60 **DECISION AND FINAL JUDGMENT ENTRY; WRIT OF PROHIBITION**

PER CURIAM:

{¶ 1} K.S., the petitioner in an adoption case, seeks a writ of prohibition to restrain Judge Richard P. Carey of the Clark County Court of Common Pleas, Probate Division, from "allowing [P.H.] to intervene or participate" in the proceedings, "from permitting P.H. to present evidence in any capacity at any hearing," "from considering any information, for any purpose, P.H. provides or may attempt to provide the Court, and from releasing confidential home study and similar investigative materials to P.H." Judge Carey has moved to dismiss the petition for failure to state a claim upon which relief may be granted. For the following reasons, Judge Carey's motion is granted, in part, and denied, in part, and this court issues a limited writ of prohibition.

I. Factual & Procedural Background

{¶ 2} J.T.S. is a minor child. In November 2024, K.S., petitioned to adopt J.T.S. Judge Carey presides over the proceedings.

{¶ 3} In March 2025, the paternity of J.T.S. was established in the juvenile court. P.H.,

J.T.S.'s biological father, moved to intervene as a party in the adoption proceedings and to object to the petition. In July 2025, Judge Carey granted P.H.'s motion to intervene, determined that P.H. was entitled to notice of the petition, and determined that P.H. was entitled to withhold his consent. K.S. appealed from Judge Carey's rulings.

{¶ 4} In March 2026, this court issued an opinion concluding that "P.H. was not entitled to notice of the adoption petition under R.C. 3107.11, nor was his consent required under R.C. 3107.06(B) or 3107.06(A)(3)." *In re Adoption of J.T.S.*, 2026-Ohio-951, ¶ 3 (2d Dist.). Our opinion "reverse[d] the judgment of the probate court and remand[ed] th[e] matter to proceed to a final hearing on the adoption." *Id*. And our final judgment, "which constitutes a mandate," reads that "[p]ursuant to the opinion of this court rendered on March 20, 2026, the judgment of the trial court is reversed, and the matter remanded for further proceedings consistent with the opinion."

{¶ 5} After our remand, P.H. "moved for an order granting him the opportunity to intervene" and "to present evidence supporting his objection at the best interest hearing." On June 25, 2026, Judge Carey granted P.H.'s motion. Judge Carey has ordered that he "will permit P.H. to be deemed a party for purpose of presenting evidence at the Best Interest hearing in this case." K.S. also alleges that P.H. has "moved for release of [K.S.'s] confidential home study and other related investigative materials" but that Judge Carey "has not yet ruled" on P.H.'s motion.

{¶ 6} On July 2, 2026, K.S. filed this original action. On July 7, 2026, this court granted an alternative writ directing Judge Carey to respond to the petition and staying all proceedings in the probate court.

{¶ 7} On July 8, 2026, Judge Carey filed a response to the petition seeking denial of the writ. On July 31, 2026, this court entered an order construing Judge Carey's response

as a motion to dismiss for failure to state a claim upon which relief may be granted. This court ordered K.S. to file his response to the motion, if any, before August 20, 2026. K.S. filed a "reply" to Judge Carey's response that same day.[1] Judge Carey filed a reply to K.S.'s reply on August 27, 2026.

II. Law & Analysis

A. Writ of Prohibition Concepts

{¶ 8} To obtain a writ of prohibition, a relator must establish (1) that a judicial officer is about to exercise judicial or quasi-judicial power, (2) that exercise of that power is unauthorized by law, and (3) that denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law. *State ex rel. Crandall, Pheils & Wisniewski v. DeCessna*, 1995-Ohio-98, ¶ 8, citing *State ex rel. Fowler v. Smith*, 1994-Ohio-302, ¶ 8. "Absent 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 by appeal." *State ex rel. Dannaher v. Crawford*, 1997-Ohio-72, ¶ 9, citing *State ex rel. Enyart v. O'Neill*, 1995-Ohio-145, ¶ 7.

{¶ 9} "Under the doctrine of the law of the case, '[a]bsent extraordinary circumstances, such as an intervening decision by the Supreme Court, an inferior court has no discretion to disregard the mandate of a superior court in a prior appeal in the same case.'" *DeCessna*. at ¶ 9, quoting *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, syllabus. "Thus, where at a rehearing following remand a trial court is confronted with substantially the same facts and issues as were involved in the prior appeal, the court is bound to adhere to the

[1] K.S. filed a memorandum in opposition to the motion to dismiss on August 24, 2026, recapitulating the same arguments made in his reply. We consider the matter fully briefed on both sides.

appellate court's determination of the applicable law." *Nolan* at 3. "Accordingly, a writ of prohibition is an appropriate remedy to prevent a lower court from proceeding contrary to the mandate of a superior court." *DeCessna* at ¶ 9, citing *State ex rel. Smith v. O'Connor*, 71 Ohio St.3d 660, 662 (1995), citing *State ex rel. TRW, Inc. v. Jaffe*, 78 Ohio App.3d 411 (8th Dist. 1992).

{¶ 10} Even so, the law-of-the-case doctrine "'comes into play only with respect to issues previously determined.'" *Giancola v. Azem*, 2018-Ohio-1694, ¶ 16, quoting *Quern v. Jordan*, 440 U.S. 332, 347, fn. 18 (1979). And the law-of-the-case doctrine "will not be applied to achieve unjust results." *Durkin v. Williams*, 2022-Ohio-1416, ¶ 17, citing *State ex rel. Baker v. State Personnel Bd. of Rev*., 1999-Ohio-328, ¶ 11.

B. Civ.R. 12(B)(6) Standard

{¶ 11} A motion to dismiss pursuant to Civ.R. 12(B)(6) is procedural and tests the sufficiency of a complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs*., 1992-Ohio-73, ¶ 9, citing *Assn. for the Defense of the Washington Local School Dist. v. Kiger*, 42 Ohio St.3d 116, 117 (1989). For purposes of the motion, we assume that the factual allegations of the complaint are true and make all reasonable inferences in favor of the relator. *Mitchell v. Lawson Milk Co*., 40 Ohio St.3d 190, 192 (1988). If it appears "beyond doubt that the relator can prove no set of facts in support of [their] claim which would entitle [them] to relief," then this court will dismiss a complaint for failure to state a claim upon which relief can be granted. *O'Brien v. Univ. Community Tenants Union, Inc*., 42 Ohio St.2d 242, 245 (1978), citing *Conley v. Gibson*, 355 U.S. 41, 45 (1957).

C. K.S. Fails to State a Claim to the Extent He Seeks to Restrain Judge Carey from Considering Any Information P.H. Provides or May Attempt to Provide the Court at the Final Hearing

{¶ 12} There is no dispute that Judge Carey intends to proceed to the best interest

phase of the proceedings in accordance with our mandate. The only salient question raised by K.S.'s petition is whether P.H. may participate in the hearing. K.S. contends that Judge Carey cannot consider any information P.H. provides or may attempt to provide at the best interest hearing because our judgment prohibits it. In contrast, Judge Carey contends that P.H.'s participation in the proceedings is consistent with our mandate because we did not address the issue.

{¶ 13} A court of appeals is in the best position to interpret its own mandate and determine whether a judge has violated that mandate. *State ex rel. Jelinek v. Schneider*, 2010-Ohio-5986, ¶ 14; *see also State ex rel. Bitter v. Missig*, 1995-Ohio-147, ¶ 13 ("The court that issued the order sought to be enforced is in the best position to determine if that order has been disobeyed."). "Under Ohio law, an adoption proceeding is a two-step process involving (1) the consent phase and (2) the best interest phase." *In re Adoption of E.G.B.*, 2025-Ohio-3005, ¶ 12 (2d Dist.) citing *In re Adoption of J.A.M.,* 2022-Ohio-2313, ¶ 9 (2d Dist.). K.S.'s appeal concerned issues relating to the consent phase. In that appeal, we concluded that Judge Carey erred in determining that P.H.'s consent was necessary, reversed his ruling to the contrary, and ordered that he proceed to the best interest phase. *J.T.S.*, 2026-Ohio-951, at ¶ 3, 67-68. However, this court did not consider any issues regarding the presentation of evidence at the best interest stage. Further, given the bifurcated nature of adoption proceedings, it would have been inappropriate for this court to provide any advisory opinion about how to conduct a hearing on the best interest of the child. *See Fortner v. Thomas*, 22 Ohio St.2d 13, 14 (1970) ("It has become settled judicial responsibility for courts to refrain from giving opinions on abstract propositions and to avoid the imposition by judgment of premature declarations or advice upon potential controversies."). Accordingly, we do not interpret our mandate to patently or unambiguously

restrict Judge Carey from considering “information” that P.H. may provide the court at a best interest hearing.

{¶ 14} Nevertheless, K.S.’s petition is clearly uncontested. As far as we can determine, the only way P.H. might conceivably provide information to the court is as a witness. A trial court “may, on *its own motion* or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called." (Emphasis added.) Evid.R. 614(A); *accord State v. Arnold*, 2010-Ohio-5379, ¶ 44 (2d Dist.) (“‘A trial court possesses the authority in the exercise of sound discretion to call individuals as witnesses of the court.’") quoting *State v. Adams*, 62 Ohio St.2d 151 (1980), paragraph four of the syllabus. Although the ordinary “purpose of calling a witness as a court's witness is to allow for a proper determination in a case where a witness is reluctant or unwilling to testify,” we cannot say that it is the only permissible purpose. *State v. Hazel*, 2012-Ohio-835, ¶ 33 (2d Dist.), citing *State v. Curry*, 2007-Ohio-5721, ¶ 18 (8th Dist.).

{¶ 15} Further, “[e]ven if a probate court determines that a parent's consent is not required, the court must still make a separate determination that the adoption is in the child's best interest.” *In re Adoption of M.R.P.*, 2022-Ohio-1631, ¶ 17 (12th Dist.), citing R.C. 3107.14(C). The burden of proving that an adoption is in the best of interest of the child remains with the petitioner. *Id*. at ¶ 19 (collecting cases). Thus, at a final hearing in an uncontested adoption, the probate court will require evidence from the petitioner touching on the eleven factors set forth in R.C. 3107.161(B). *Id.* at ¶ 17. These factors include “[t]he child’s interaction and interrelationship with the child’s parents, siblings, and any other person who may significantly affect the child’s best interest.” R.C. 3107.161(B)(8). It is conceivable that Judge Carey may find that P.H.’s testimony sheds some light on the best interest factors.

{¶ 16} In any event, our opinion and judgment did not suggest Judge Carey lacked authority to call P.H. as the court's witness. Again, this court did not consider at all how the best interest hearing would proceed, only that Judge Carey would proceed. And if Judge Carey determines that P.H. should be called as the court's witness, an appeal after final judgment provides K.S. with an adequate remedy. "We review the trial court's decision to call a witness as a court's witness for an abuse of discretion" on appeal. *State v. Renner*, 2013-Ohio-5463, ¶ 24 (2d Dist.). Likewise, the broader question of whether a trial court has abused its discretion denying an adoption petition may be reviewed on appeal. *See, e.g., In re Adoption of D.W.D.*, 2024-Ohio-5593, ¶ 2 (2d Dist.) (reversing judgment of probate court and concluding that the court abused its discretion in determining the best interest of the child). Therefore, K.S.'s prohibition claim fails to the extent that our judgment did not patently and unambiguously prevent Judge Carey from considering P.H.'s testimony as a witness at the best interest hearing and because an appeal is an adequate remedy in the event P.H. does so testify.

D. K.S. States a Claim Insofar as Judge Carey Intends to Allow P.H. to Intervene as a Party and is Entitled to a Writ

{¶ 17} Nothing in our March 20, 2026 "Final Judgment Entry & Opinion" states that P.H. cannot testify at the best interest hearing as a court's witness or that Judge Carey cannot consider that testimony in evaluating the best interest of J.T.S. Nevertheless, the unambiguous language of Judge Carey's June 25, 2026 order "will permit P.H. to be deemed *a party* for purpose of presenting evidence at the Best Interest hearing in this case." (Emphasis added.) Judge Carey's designation of P.H. as a "party" signals that P.H. has the right to exchange and receive discovery (such as a home study or investigative materials), file pleadings, question witnesses, and make legal arguments. In other words, Judge Carey's order expressly contemplates that P.H. will act as an advocate for his own interests on equal

footing with (and in opposition to) K.S.

{¶ 18} This court has already determined that P.H. was not entitled to notice of the adoption petition and could not withhold his consent to the adoption of J.T.S. Under the adoption statutes, a "party" is "a petitioner, adoptee, or any other person or agency that is part of an adoption proceeding and whose consent to the adoption is necessary but has not been obtained." R.C. 3107.01(O). Thus, this court has determined that P.H. is not a proper "party" to the adoption proceedings because his consent to the adoption is not necessary.

{¶ 19} Because our final judgment and opinion conclusively resolved the issue of whether P.H. is a party to the adoption proceedings, Judge Carey is bound to adhere to our determination that P.H. is not a party. Thus, Judge Carey lacks authority to permit P.H. to intervene and participate as a party at the best interest hearing. Judge Carey's order allowing P.H. to intervene and participate as a party in the adoption proceedings is a legal nullity. Given that Judge Carey's lack of authority to proceed in this manner is patent and unambiguous, K.S. need not demonstrate the availability of an adequate remedy in the ordinary course of law. K.S. has, therefore, conclusively demonstrated that he is entitled to a writ of prohibition.

III. Conclusion

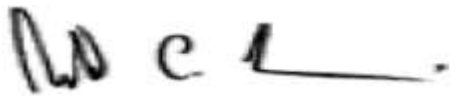
{¶ 20} For all the foregoing reasons, Judge Carey's motion to dismiss for failure to state a claim is GRANTED, in part, and DENIED, in part.

{¶ 21} To the extent that the motion to dismiss has been denied and there are no discernable factual disputes, this court proceeds to the merits. We GRANT a peremptory writ of prohibition to restrain Judge Carey from allowing P.H. to intervene and participate as a party in Clark County Court of Common Pleas, Probate Division, Case No. 20245043. Further, Judge Carey is restrained from ordering the release of confidential home study and

similar investigative materials to P.H.

{¶ 22} Costs taxed to the respondent.

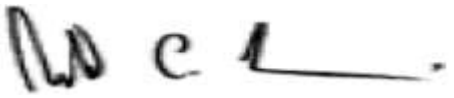
For the court,



RONALD C. LEWIS, PRESIDING JUDGE

TUCKER, J., and HANSEMAN, J., concur.

To The Clerk: Within three (3) days of entering this judgment on the journal, you are directed to serve on all parties not in default for failure to appear notice of the judgment and the date of its entry upon the journal, pursuant to Civ.R. 58(B).



RONALD C. LEWIS, PRESIDING JUDGE