

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

GERALD B. GOLUB

Relator

-VS-

THE HONORABLE DIXIE PARK,
ET AL.,

Respondents

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Craig R. Baldwin, J.

Case No. 2024CA00075

OPINION

CHARACTER OF PROCEEDINGS:

Writ of Prohibition

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

September 17, 2024

APPEARANCES:

For Relator

For Respondent

GERALD B. GOLUB
Golub Law Office
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Canton, Ohio 44709

ROBERT DUFFRIN
Assistant Stark County Prosecutor
110 Central Plaza South, Suite #510
Canton, Ohio 44702

LAURA MILLS
MILLS, MILLS, FIELY & LUCAS, LLC
101 Central Plaza South, Suite #1200
Canton, Ohio 44702

WILLIAM SHARRARD, JR.
TIFFANY SHARRARD
4560 Arrow Road, N.W.
Carrollton, Ohio 44615

Hoffman, P.J.

{¶1} Relator Gerald B. Golub seeks a writ of prohibition, temporary restraining order and preliminary injunction to stay a hearing conducted in the Stark County Probate Court on May 13, 2024, at 9:30 a.m. Attorney Golub also seeks to prohibit the Stark County Probate Court from deciding causes of action previously dismissed by the probate court, for lack of jurisdiction, in *Gerald Golub v. Louis W. Sherman, et al.*, Stark Probate No. 247226. Respondents are identified as Judge Dixie Park; Laura Mills; Mills, Mills, Fiely & Lucas, LLC; William Sharrard, Jr. and Tiffany Sharrard.

{¶2} We grant Judge Park's summary judgment motion and dismiss Attorney Golub's Complaint for Writ of Prohibition. We also dismiss Attorney Golub's request for prohibition relief against the remaining nonjudicial respondents.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

{¶3} On April 5, 2024, Judge Park issued Citations to Appear to Attorney Golub and the fiduciary/beneficiary, William Sharrard, Jr., in four estates pending before the Stark County Probate Court (Case Nos. 241722, 244969, 244970 and 244971). The citations referenced the possibility of contempt and warned that failure to appear may result in a finding of contempt of court. The citations did not state the subject matter of the hearing.

{¶4} On April 17, 2024, Attorney Golub filed Motions to Rescind Citation to Appear and for Continuance Pending Determination of Motion arguing lack of subject-matter jurisdiction, lack of due process and a conflict with a religious holiday. The probate court denied Attorney Golub's motion to rescind and granted a continuance rescheduling the citation hearing to May 13, 2024.

{¶15} Thereafter, on May 9, 2024, Attorney Golub filed this prohibition action specifically stating, the “complaint is to prohibit the Honorable Dixie Park of the Stark County Probate Court from ordering Relator Gerald Golub to appear at a hearing regarding the Estates of Louis Shurman, Irene Shurman, Gerald Shurman, and Darlene Shurman (Probate Case Nos.: 241722, 244969, 244970, and 244971, respectively.)” Complaint, p. 3.

{¶16} The complaint also sought to prohibit Judge Park from deciding a cause of action previously dismissed by the probate court for lack of subject-matter jurisdiction, *Gerald Golub v. Louis W. Sherman, et al.*; Case No. 247226, which was refiled and dismissed in the general division (Stark General Division Case No. 2023CV02100) and is currently pending before this Court (Fifth District Stark Case No. 2024C00022). Finally, Attorney Golub requested a temporary restraining order and preliminary injunction to stay the citation hearing, in the four estates, pending a resolution of this original action.

{¶17} Attorney Golub avers, in his prohibition complaint, he previously represented Mr. Sharrard and his wife and beneficiary, Tiffany Sharrard, in the above four probate estates. Following his removal as counsel for the four estates, Attorney Golub sued Mr. Sharrard, Mrs. Sharrard, and subsequent counsel, Attorney Laura Mills and her firm Mills, Mills, Fiely & Lucas, LLC. The cause of action against these parties stems from allegations of withholding payment for legal fees and estate assets from which Attorney Golub claims he is owed a percentage.

{¶18} We did not address Attorney Golub’s prohibition complaint before the hearing conducted by Judge Park on May 13, 2024. On May 15, 2024, Judge Park issued a Judgment Entry in the four estates referenced above. She found that no accounting had

been filed in any of the four estates and that Attorney Golub took fees, from the estates, without approval from the probate court or the filing of a final account. Attorney Golub agreed, at the citation hearing, to return the attorney fees in the amount of \$43,560.

{¶9} On May 31, 2024, Judge Park filed a Motion to Dismiss Complaint Seeking a Writ of Prohibition and Injunctive (sic). Attorney Golub filed a response to the Motion to Dismiss on June 17, 2024. On June 26, 2024, Judge Park filed a Reply to Response to Motion to Dismiss Filed by Relator. On July 3, 2024, the Court converted Judge Park's Motion to Dismiss to a summary judgment motion and gave the parties additional time to file Civ.R. 56(C) evidence and supplemental briefs.

PROHIBITION ELEMENTS AND SUMMARY JUDGMENT STANDARD

Prohibition Elements

{¶10} To be entitled to a writ of prohibition, Attorney Golub must establish: (1) Judge Park is about to exercise judicial power, (2) the exercise of power is unauthorized by law, and (3) denying the writ would result in injury for which no adequate remedy exists in the ordinary course of law. (Citation omitted.) *State ex rel. Duke Energy Ohio, Inc. v. Hamilton Cty. Court of Common Pleas*, 2010-Ohio-2450, ¶ 16. "If a lower court patently and unambiguously lacks jurisdiction to proceed in a cause, prohibition . . . will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions." *Id.* at ¶ 17, quoting *State ex rel. Mayer v. Henson*, 2002-Ohio-6323, ¶ 12, citing *State ex rel. Dannaher v. Crawford*, 78 Ohio St.3d 391, 393 (1997).

{¶11} "Where jurisdiction is patently and unambiguously lacking, [a relator] need not establish the lack of an adequate remedy at law because the availability of alternate

remedies like appeal would be immaterial.” *Id.*, quoting *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 2008-Ohio-2637, ¶ 15, citing *State ex rel. Columbus S. Power Co. v. Fais*, 2008-Ohio-849, ¶ 16. “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 possesses an adequate remedy by appeal.” *State ex rel. Willacy v. Smith*, 78 Ohio St.3d 47, 51 (1997), citing *State ex rel. Fraternal Order of Police, Ohio Labor Council, Inc. v. Franklin Cty. Court of Common Pleas*, 76 Ohio St.3d 287, 289 (1996). Therefore, an available appeal will foreclose relief in prohibition, as extraordinary relief is not available to “circumvent the appellate process.” *State ex rel. Lewis v. Moser*, 72 Ohio St.3d 25, 28 (1995).

Summary Judgment Standard

{¶12} Our review of this matter on summary judgment is limited to the pleadings and affidavits and any sworn or certified copies of papers or parts of papers referred to in the affidavits submitted for consideration. See Civ.R. 56(E).

{¶13} Civ.R. 56(C) explains:

{¶14} A motion for summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the parties’ favor.

Analysis

Attorney Golub's prohibition action is moot, in part.

{¶15} The fact that the May 13, 2024 probate court citation hearing occurred before this Court's ruling on Attorney Golub's prohibition complaint renders that portion of the complaint moot. Attorney Golub also sought a temporary restraining order and a preliminary injunction as to the May 13, 2024 probate court hearing. These requests are also rendered moot since the citation hearing occurred.

The hearing conducted by Judge Park on May 13, 2024, was not unauthorized by law.

{¶16} However, in addition to attempting to pause the May 13, 2024 hearing, Attorney Golub also asks this Court to prohibit Judge Park from deciding causes of actions she previously dismissed for lack of jurisdiction and which are now pending before this Court in *Gerald B. Golub v. William Sharrard, Jr., et al.*, Stark App. No. 2024CA00022, an appeal from the Stark County Court of Common Pleas, General Division.

{¶17} It is uncertain to this Court why Attorney Golub believed Judge Park would be taking action, in a previously dismissed case (Stark Probate No. 247226), when the Judgement Entry scheduling the citation hearing that he is challenging by way of this writ was issued in four pending estate matters identified as Case Nos. 241722; 244969; 244970 and 244971. The Judgment Entry issued on April 17, 2024 that denied Attorney Golub's request to rescind the citation hearing had absolutely nothing to do with the previously dismissed probate case. In fact, as demonstrated in her May 15, 2024 Judgment Entry, issued by Judge Park after the citation hearing, all actions ordered by Judge Park pertain to the four pending estates referenced above. Judge Park did not

exercise any judicial authority in the previously dismissed probate case and there is nothing to indicate she will do so in the future.

{¶18} The Stark County Probate Court has jurisdiction to preside over decedent's estates, including estate distributions and performance of administrators. See R.C. 2101.24(A)(1)(c) (The probate court has exclusive jurisdiction "[t]o direct and control the conduct and settle the accounts of executors and administrators and order the distribution of estates.") The citation hearing conducted on May 13, 2024 pertained, in part, to Attorney Golub's taking of attorney fees, from the four estates, without prior court approval as required by Stark Cty. Probate R. 71.1 and 71.2. It was merely a continuing exercise of jurisdiction in four estate matters properly pending before the Stark County Probate Court.

{¶19} In her May 15, 2024 Judgment Entry, Judge Park specifically found that no accounting had been filed in any of the four estates and that "[t]he testimony of Attorney Golub is that he received \$43,560.00 in attorney fees. These fees were taken without receiving court approval or the filing of a final account." Judgment Entry, May 15, 2024, p. 5. Judge Park's Judgment Entry did not identify or discuss the dismissed case, Probate Case No. 247226.

{¶20} The Stark County Probate Court undoubtedly has jurisdiction to preside over the administration of estates and the payment of attorney fees in estates. Because Judge Park did not lack jurisdiction to conduct the citation hearing on May 13, 2024, Attorney Golub has an adequate remedy at law by way of an appeal. In fact, this is demonstrated by the fact that Attorney Golub appealed Judge Park's May 15, 2024

Judgment Entry in all four pending probate estates. See Stark App. Nos. 2024CA00088; 2024CA00089; 2024CA00090; 2024CA00091.

Attorney Golub is not entitled to a writ of prohibition against the nonjudicial respondents.

{¶21} Attorney Golub also named Laura Mills; Mills, Mills, Fiely & Lucas, LLC; William Sharrard, Jr. and Tiffany Sharrard as respondents. Attorney Golub served each of these respondents with a copy of the Complaint for Writ of Prohibition. None of the respondents filed an Answer or dispositive motion.

{¶22} Despite respondents lack of response, we find Attorney Golub is not entitled to a writ of prohibition against these nonjudicial respondents. None of these respondents exercise judicial or quasi-judicial authority, which is one of the elements that must be established before a writ of prohibition will issue. *State ex rel. Potts v. Comm. on Continuing Legal Edn.*, 93 Ohio St.3d 452, 455 (2001) quoting *State ex rel Wright v. Ohio Bur. of Motor Vehicles*, 87 Ohio St.3d 184, 186 (1999). (“ ‘Quasi-judicial authority is the power to hear and determine controversies between the public and individuals that require a hearing resembling a judicial trial.’ ” [Emphasis added in *Potts*.]).

{¶23} Here, the remaining respondents have not and cannot exercise judicial or quasi-judicial authority. Therefore, Attorney Golub’s writ of prohibition against these four respondents is fatally defective as these respondents are not proper parties for purposes of Attorney Golub’s prohibition complaint. We therefore dismiss the writ as to these parties.

Conclusion

{¶24} For the foregoing reasons, we grant Judge Park’s summary judgment motion. There is no question of material fact that Judge Park had jurisdiction to conduct

a citation hearing in the four estates pending in the Stark County Probate Court. Further, Judge Park did not exceed her jurisdiction by addressing a previously dismissed probate case. The Complaint for Prohibition is fatally defective and dismissed as to Respondents Laura Mills; Mills, Mills Fiely & Lucas, LLC; William Sharrard, Jr. and Tiffany Sharrard.

{¶25} The clerk of courts is hereby directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal. See Civ.R. 58(B).

{¶26} RESPONDENT JUDGE PARK'S MOTION FOR SUMMARY JUDGMENT GRANTED.

{¶27} MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION DENIED.

{¶28} WRIT DISMISSED AS TO RESPONDENTS LAURA MILLS; MILLS, MILLS, FIELY & LUCAS, LLC; WILLIAM SHARRARD, JR. AND TIFFANY SHARRARD.

{¶29} COSTS TO RELATOR.

{¶30} IT IS SO ORDERED.

By: Hoffman, P.J.

Wise, J. and

Baldwin, J. concur

