

[Cite as *State ex rel. Goshay v. Lucas*, 2010-Ohio-4363.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95060

**STATE OF OHIO, EX REL.
BRYANT GOSHAY**

RELATOR

vs.

MAGISTRATE PAUL LUCAS

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion Nos. 435098, 434443, 434680, and 433582
Order No. 437048

RELEASE DATE: September 14, 2010

FOR RELATOR

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} On May 4, 2010, the relator, Bryant Goshay, commenced this mandamus action against the respondent, Magistrate Paul Lucas, to compel the magistrate to rule on and to grant his motion for summary judgment,¹ which he filed on December 7, 2009 in the underlying case, *Capital Source Bank FBO Aeon Financial LLC v. Bryant Goshay*, Cuyahoga County Common Pleas Court Case No. CV-09-709000. On June 2, 2010, Goshay moved for summary judgment in the present case. On June 23, 2010, the respondent, through the Cuyahoga County Prosecutor, filed a combined motion for summary judgment

¹ “Motion for summary judgment or in the alternative motion to dismiss with demand for remuneration for malicious prosecution” was the full title of Goshay’s

and brief in opposition to Goshay's dispositive motion. On July 2, 2010, Goshay filed his brief in opposition to the respondent's summary judgment motion. For the following reasons, this court denies Goshay's motion for summary judgment, grants the respondent's motion for summary judgment, and denies Goshay's application for an extraordinary writ.

{¶ 2} The underlying case is a tax certificate foreclosure case. The case is assigned to Judge Dick Ambrose, who referred it to Magistrate Paul Lucas to try the issues of law and fact arising in the case. Goshay argues that Capital Source Bank lacks standing to pursue the underlying case because Capital Source Bank and its predecessor did not comply with R.C. 5721.36 in transferring the tax certificate to Capital Source Bank. This is the basis for his December 2009 summary judgment motion. When the magistrate did not rule on the motion, he commenced this writ action. Judge Ambrose denied Goshay's motion for summary judgment on June 11, 2010. However, Goshay argues that the defects in the transfer are so obvious that they patently and unambiguously deprive the trial court of jurisdiction. Therefore, mandamus will lie to compel the trial court not only to rule on his December 2009 motion for summary judgment but also to grant it. Goshay concludes that this court should grant him extraordinary relief in mandamus because the trial court lacks jurisdiction over the underlying case.

motion.

{¶ 3} The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief, and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914. Furthermore, mandamus is not a substitute for appeal. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119; *State ex rel. Daggett v. Gessaman* (1973), 34 Ohio St.2d 55, 295 N.E.2d 659; and *State ex rel. Pressley v. Indus. Comm. of Ohio* (1967), 11 Ohio St.2d 141, 228 N.E.2d 631, paragraph three of the syllabus. Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Tommie Jerningham v. Judge Patricia Gaughan* (Sept. 26, 1994), Cuyahoga App. No. 67787. Moreover, mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1; *State ex rel. Shafer v. Ohio Turnpike Comm.* (1953), 159 Ohio St. 581, 113 N.E.2d 14; *State ex rel. Connole v. Cleveland Bd. of Edn.* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850; and *State ex rel. Dayton-Oakwood Press v. Dissinger* (1940), 32 Ohio Law Abs. 308.

{¶ 4} In the present case Judge Ambrose's denial of Goshay's summary judgment motion moots the claim to compel a ruling. The trial court has discharged its duty to rule on the motion, and Goshay has received his requested relief, a ruling. To compel a court to grant a motion for summary judgment would be to control judicial discretion, for which mandamus will not lie. If necessary, an appeal at the end of the case provides an adequate remedy at law, which precludes mandamus.

{¶ 5} Goshay also tries to state a claim in mandamus for lack of jurisdiction.² In doing so, he invokes the principles for the writ of prohibition: (1) the respondent against whom it is sought is about to exercise judicial power, (2) the exercise of such power is unauthorized by law, and (3) there is no adequate remedy at law. *State ex rel. Largent v. Fisher* (1989), 43 Ohio St.3d 160, 540 N.E.2d 239. Prohibition will not lie unless it clearly appears that the court has no jurisdiction of the cause that it is attempting to adjudicate or the court is about to exceed its jurisdiction. *State ex rel. Ellis v. McCabe* (1941), 138 Ohio St. 417, 35 N.E.2d 571, paragraph three of the syllabus. "The writ will not issue to prevent an erroneous judgment, or to serve the purpose of appeal, or to correct mistakes of the lower court in deciding questions within its jurisdiction." *State ex rel. Sparto v. Juvenile Court of Darke Cty.* (1950), 153 Ohio St. 64, 65, 90 N.E.2d

² In *State ex rel. Ballard v. O'Donnell* (1990), 50 Ohio St.3d 182, 553 N.E.2d 650, paragraph two of the syllabus, the Supreme Court of Ohio held: "If an inferior court is without jurisdiction to render a judgment, mandamus will lie to compel the court to vacate its judgment and findings."

598. Furthermore, it should be used with great caution and not issue in a doubtful case. *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas* (1940), 137 Ohio St. 273, 28 N.E.2d 273, and *Reiss v. Columbus Mun. Court* (App. 1956), 76 Ohio Law Abs. 141, 145 N.E.2d 447. Nevertheless, when a court is patently and unambiguously without jurisdiction to act whatsoever, the availability or adequacy of a remedy is immaterial to the issuance of a writ of prohibition. *State ex rel. Tilford v. Crush* (1988), 39 Ohio St.3d 174, 529 N.E.2d 1245 and *State ex rel. Csank v. Jaffe* (1995), 107 Ohio App.3d 387, 668 N.E.2d 996. However, absent such a patent and unambiguous lack of jurisdiction, a court having general jurisdiction of the subject matter of an action has authority to determine its own jurisdiction. A party challenging the court's jurisdiction has an adequate remedy at law via appeal from the court's holding that it has jurisdiction. *State ex rel. Rootstown Local School Dist. Bd. of Edn. v. Portage County Court of Common Pleas* (1997), 78 Ohio St.3d 489, 678 N.E.2d 1365 and *State ex rel. Bradford v. Trumbull Cty. Court*, 64 Ohio St.3d 502, 1992-Ohio-116, 597 N.E.2d 116. Moreover, the court has discretion in issuing the writ of prohibition. *State ex rel. Gilligan v. Hoddinott* (1973), 36 Ohio St.2d 127, 304 N.E.2d 382.

{¶ 6} The gravamen of Goshay's argument is that the defects in the transfer of the tax certificate and Capital Source Bank's otherwise lack of personal interest in the property deprive it of standing to pursue the tax certificate foreclosure. The defects in the transfer are patent and unambiguous and,

without a party having standing to commence the foreclosure action, the trial court lacks jurisdiction over the matter.

{¶ 7} However, this argument is not well founded. Pursuant to R.C. 2305.01, the trial court has basic subject matter jurisdiction over foreclosure actions. Thus, it has sufficient jurisdiction to determine its own jurisdiction. Moreover, lack of standing challenges the capacity of a party to bring an action, not the subject matter jurisdiction of the court. *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 1998-Ohio-275, 701 N.E.2d 1002, ¶23. In this case, the Cuyahoga County Prosecutor sought a writ of prohibition to prevent the trial court from hearing a claim for declaration of wrongful imprisonment; the prosecutor argued that the special administrator of Sam Shepard's estate lacked standing to bring such a claim, and this defect rendered the trial court without jurisdiction to hear the case. The Supreme Court of Ohio rejected that proposition and held that the trial court had discretion to decide whether a party had standing and that the trial court's decision on standing is properly reviewed in a postjudgment appeal, rather than through an extraordinary writ. So too in this case, the issue of whether the tax certificate was properly transferred should be considered on appeal on a full record, not in a writ action.

{¶ 8} Similarly, in *Washington Mutual Bank v. Beatley*, Franklin App. No. 06AP-1189, 2008-Ohio-1679, a defendant argued that the trial court lacked subject matter jurisdiction to hear a foreclosure case because the plaintiff bank

did not properly register its fictitious name pursuant to R.C. 1329.10(B). The court of appeals reaffirmed the principle that neither standing nor capacity to sue equates with jurisdiction. Thus, a trial court should not dismiss for lack of subject matter jurisdiction because the plaintiff lacked standing.

{¶ 9} Accordingly, this court denies Goshay's motion for summary judgment, grants the respondent's motion for summary judgment, and denies the application for an extraordinary writ. Relator to pay costs. This court directs the Clerk of the Eighth District Court of Appeals to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

FRANK D. CELEBREZZE, JR., JUDGE

KENNETH A. ROCCO, P.J., and
CHRISTINE T. MCMONAGLE, J., CONCUR