[Cite as *Ace Diamond & Jewelry Brokers, Inc. v. Sweeney*, 2014-Ohio-5226.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

ACE DIAMOND & JEWELRY BROKERS, INC.,	)	CASE NO. 14 MA 62
PETITIONER,	)	
- VS -	)	OPINION AND JUDGMENT ENTRY
JUDGE MAUREEN SWEENEY, COMMON PLEAS COURT, AND JUDGE THOMAS POKORNY, SITTING BY ASSIGNMENT,	)	
RESPONDENTS.	)	

CHARACTER OF PROCEEDINGS: Petitioner's Petition for Writ of Prohibition; Respondents' Motion to Dismiss.

JUDGMENT: Petition for Writ of Prohibition Granted; Motion to Dismiss Denied; Writ to Issue.

APPEARANCES:

For Petitioner: Attorney J. Gerald Ingram
7330 Market Street
Youngstown, Ohio 44512

For Respondents: Attorney Paul Gains
Prosecuting Attorney
Attorney Ralph Rivera
Assistant Prosecuting Attorney
21 West Boardman Street, 6th Floor
Youngstown, Ohio 44503

JUDGES:
Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: November 7, 2014

PER CURIAM:

¶{1} Ace Diamond & Jewelry Brokers, Inc. has filed a petition seeking a writ of prohibition against Mahoning County Common Pleas Court Judge Maureen A. Sweeney, who ordered Ace to transfer property it purchased to a victim in a criminal case, and Visiting Judge Thomas P. Pokorny, who refused to vacate such order. Ace urges that it is entitled to such a writ because a judge in a criminal case cannot determine ownership of stolen property and order a pawnbroker who purchased property from a thief (or from a transferee of a thief) to return the property to the claimed owner. For the following reasons, we conclude that the criminal court's action was unauthorized by law and the criminal court patently and unambiguously lacked personal jurisdiction over Ace. A writ in prohibition is thus warranted.

STATEMENT OF THE CASE

¶{2} According to the petition, Michael Jolliff sold jewelry to Ace on October 7, 2013 for $571 as evidenced in receipt 20515. Boardman police inspected all receipts involving Jolliff and then placed a thirty-day hold on the items, and Ace agreed to hold the items until the criminal case was resolved. On October 29, 2013, Joanna Jordan went to Ace and identified the jewelry in receipt 20515 as belonging to her. Jolliff was thereafter indicted in Mahoning County Common Pleas Court Case No. 13CR1165 for two counts of receiving stolen property due to his sales to Ace involving two victims, one of whom was Joanna Jordan.

¶{3} On April 4, 2014, Judge Sweeney issued a judgment in the pending criminal case, stating that the items in Exhibit 1 in possession of Ace were photographed and shall be returned to the owner, Joanna Jordan, with the photographs being admitted in place of the actual evidence at trial. The defendant had not yet pled guilty, and the entry noted that Crim.R. 26 contemplated return of property at the earliest possible time.

¶{4} Notably, the state's April 3 motion to substitute photographs in place of the items pursuant to Crim.R. 26 simply asked for an order authorizing this photographic substitution and "permitting" Ace "to release" the items to the victim. The state thus did not ask for the order issued by the trial court, i.e. the state did not ask the court to order Ace to transfer the items to Ms. Jordan.

¶{5} Apparently, Joanna Jordan then presented the April 4 judgment entry to Ace on April 9, 2014 and requested the return of her jewelry. Ace states that the extent of Exhibit 1 (the items ordered returned in the court's April 4, 2014 judgment entry) was unknown. The state's motion said that Exhibit 1 was attached, but the motion in the file contains no attachment. Nor was the exhibit attached to the judgment entry. It is pointed out that Jolliff sold other items to Ace on October 10, 2013, for $110 represented in receipt 20535 and on October 11, 2013, for $139 represented in receipt 20539. And, the criminal case involved another victim as well.

¶{6} On April 10, 2014, Ace filed a motion to vacate the April 4 order. Ace stated that it had a valid possessory interest and is entitled to due process. In pertinent part, the motion cited the Supreme Court's *Wacksman* case, stating that it is beyond the power and function of a judge in a criminal prosecution of a thief to determine ownership of property as between the pawnbroker and the claimed true owner as that is a matter for a civil action.

¶{7} Ace also cited to two cases where a different Mahoning County Common Pleas Court judge recognized that he could not order Ace to release the stolen property to the claimed owner in the criminal case. Ace attached the brief filed in those cases, wherein it was urged that R.C. 4727.12(C) states only that the pawnbroker "may" return the allegedly stolen property to the true owner directly and further provides that if the pawnbroker does not, then the true owner may recover the property in an action at law. The affidavit of Ace's president was attached to the motion, asserting that he was deprived of notice and a hearing and that he should be given an opportunity to set forth the law governing the property rights of a pawnbroker.

¶{8} On May 16, 2014, Judge Pokorny (a visiting judge) issued a judgment entry overruling the motion to vacate and ordering all physical evidence in Ace's possession to be returned to the owner through the prosecutor's office. Ace did not appeal that order. (We note that although the May 16 order stated that it was to be served on Ace's attorney, the clerk's docket shows only service on the prosecutor and the defendant's attorney. As to the April 4 entry, it does not instruct service on any party; nor does the docket show service).

¶{9} Ace filed the within petition for a writ of prohibition on June 2, 2014.[1] Attached to the petition is an affidavit of Ace's president, which recites most of the above facts and states that Jolliff represented that he was the true owner of the jewelry, Ace kept a proper record of the transaction under Chapter 4727, and Ace had no actual or constructive knowledge that the jewelry was stolen.

¶{10} The petition asserts that the respondent judges lacked personal jurisdiction over Ace in a criminal prosecution of a thief (or transferee of a thief, as this is a receiving stolen property case). It is urged that Ace was not a party and was deprived of due process. The petition additionally asserts the judges lacked subject matter jurisdiction to determine ownership of property between a pawnbroker and a claimed owner during a criminal proceeding.

¶{11} Ace relies on the *Wacksman* holding that a judge in a criminal proceeding against a thief has no authority to determine ownership between a pawnbroker and a claimed owner and R.C. 4727.12's statement that the pawnbroker "may" return the property to the true owner and if the pawnbroker does not, then the true owner may file an action at law. Ace states that it had no adequate remedy at law as it was not a party to the criminal case and alternatively urges that the trial court patently and unambiguously lacked jurisdiction to determine and transfer ownership of property from a pawnbroker to the claimed owner in a criminal case.

¶{12} The respondents filed an answer and a motion to dismiss the writ. The respondents suggest that a criminal court is permitted to order a pawnbroker to return property to the claimed owner as the criminal case is an action at law as contemplated in R.C. 4727.12. They opine that requiring the claimed owner to file a civil action is a waste of time since the true owner is not required to pay recovery fees, citing the Fifth District's *Gessner* case on the issue of recovery fees.

¶{13} The respondents also state that Ace is improperly using a writ as a substitute for a direct appeal of the denial of its motion to vacate and thus Ace has failed to show that there was no adequate remedy at law. As to the patent and unambiguous lack of jurisdiction exception to the adequate remedy at law element, the

[1] Our judgment may affect the naming of Ace as the recipient of restitution in the June 2, 2014 sentencing entry, where Ace was granted restitution in the amount of $820 (the total of the three receipts), as the orders upon which that order was based are being voided.

respondents posit that the question is one of authority as opposed to jurisdiction. As to this point, they argue that a common pleas court has general subject matter jurisdiction over criminal cases under R.C. 2931.03 and to return property to an owner under Crim.R. 26. The respondents suggest that *Wacksman* is outdated and urge that the *Wacksman* Court did not speak of "subject matter jurisdiction."

¶{14} Ace filed a memorandum in opposition, insisting that it had no adequate remedy at law as it lacked standing to appeal because it was not a party to the criminal case, stating that there is no procedure to intervene in a criminal case. Ace explained that its motion to vacate did not make it a party to the criminal case as it was merely asserting the trial court's lack of jurisdiction. Ace reiterated that a criminal court lacks jurisdiction to determine the identity of the owner of stolen property as between the pawnbroker and the claimed owner, citing *Wacksman* and R.C. 4727.12.

¶{15} The matter is now fully before this court. The parties set forth their legal arguments in the motion proceedings, and the ultimate issue is purely legal. The respondents agree we can view the record of the criminal case, including the judgment entries that are being challenged. Although every fact may not be uncontroverted, the pertinent facts are unchallenged and mostly lie within the record of the criminal case. A peremptory writ, can be granted without evidence and hearing "if the pertinent facts are uncontroverted and it appears beyond doubt that the petitioner is entitled to the requested extraordinary relief in prohibition * * *." *State ex rel. Bates v. Court of Appeals for the Sixth Appellate Dist.*, 130 Ohio St.3d 326, 2011-Ohio-5456, 958 N.E.2d 162, ¶ 8-10. This original action does not call for an evidentiary hearing, and it is not proposed that one is necessary to reach the decision we make herein.

WRIT OF PROHIBITION

¶{16} Generally, to be entitled to a writ of prohibition, the petitioner must establish the following factors: (1) the court 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. *State ex rel. Harsh v. Oney*, 138 Ohio St.3d 192, 2014-Ohio-458, 5 N.E.3d 610, ¶ 6. Yet, the third factor is inapplicable when the lower court's jurisdiction is patently and unambiguously lacking. *Id.*

¶{17} This lacking jurisdiction can be that of subject matter jurisdiction or personal jurisdiction over a party. *See State ex rel. Doe v. Capper*, 132 Ohio St.3d 365, 2012-Ohio-2686, 972 N.E.2d 553; *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 235, 638 N.E.2d 541 (1994). In such case, the second factor is highly pertinent to and can become subsumed by a finding that the trial court patently and unambiguously lacked jurisdiction. *See Capper*, 132 Ohio St.3d 365 at ¶ 10-11.

¶{18} The first factor is not disputed by the respondents: the court is about to or has exercised judicial power. We thus begin with the second factor: whether the court's exercise of power here is unauthorized by law.

IS CRIMINAL COURT AUTHORIZED TO DETERMINE OWNERSHIP AND ORDER PAWNBROKER TO TRANSFER PROPERTY TO CLAIMED OWNER?

¶{19} Answering this question first entails a review of some of the statutes governing pawnbrokers, the violation of which can result in strict criminal penalties for a pawnbroker. *See* R.C. 4707.99. A pawnbroker must maintain records of its sales, keep specific books and forms, and make reports to the local police department. R.C. 4727.08; R.C. 4727.09. And, the books of the pawnbroker are open to police inspection. R.C. 4727.08(D).

¶{20} Pursuant to R.C. 4727.12(A), a licensed pawnbroker shall retain any purchased item until the expiration of fifteen days after the purchase is made unless the chief of police has provided permission to dispose of the item earlier. If local law enforcement has probable cause to believe that an item is stolen, the pawnbroker is to be notified in writing, which shall cause the pawnbroker to retain the article until the expiration of thirty days after the pawnbroker is required to make the information available (unless the pawnbroker receives written permission prior to such expiration). R.C. 4727.12(B). The next subdivision states:

> If the chief or sheriff receives a report that property has been stolen and determines the identity of the true owner of the allegedly stolen property that has been purchased or pawned and is held by a licensee, and informs the licensee of the true owner's identity, *the licensee may restore the allegedly stolen property to the true owner directly.*

If a licensee fails to restore the allegedly stolen property, the true owner may recover the property from the licensee in an action at law.

(Emphasis added). R.C. 4727.12(C).

¶{21} Finally, the pawnbroker can charge the seller, and any person who acted in concert with the seller to defraud the pawnbroker, the amount paid plus interest and storage "[i]f the pawnbroker returns the allegedly stolen property to the true owner". R.C. 4727.12(D). We note here that the statute does not allow the true owner to be charged by the pawnbroker, contrary to a suggestion made by Ace below.

¶{22} In *Gessner*, a pawnshop unknowingly purchased stolen items for $150 and only released the items to the true owner after the owner paid $150 that the pawnshop had paid to the thief. The owner then filed a complaint against the pawnshop, and the trial court granted judgment on the pleadings to the owner in the amount of $150 plus interest and costs. In affirming, the Fifth District stated that the pawnshop unlawfully charged the owners for their property as only the seller and those in concert could be charged. *Gessner v. Gregg's Pawn Shop, Inc.*, 181 Ohio App.3d 217, 2009-Ohio-713, 908 N.E.2d 948 (5th Dist.).

¶{23} As Ace emphasizes, the statute provides that the pawnbroker "may" return the property to the person that law enforcement believes is the true owner. And, "[i]f" the pawnbroker does not do so, the claimed owner may recover the property in an action at law. Contrary to the respondents position, the "action at law" referred to in R.C. 4727.12(C) (where the claimed owner is to seek return of the property from the pawnshop) would not be a criminal proceeding against another party. This conclusion requires a review of the pronouncements of the Ohio Supreme Court regarding a pawnbroker's rights and obligations.

¶{24} In *Wacksman*, the City of Cincinnati enacted rules requiring pawnbrokers to deliver items claimed to be stolen to the police department and requiring the criminal court presiding at a criminal defendant's trial to determine the ownership of the alleged stolen property and deliver it to the person whom the judge finds to be the true and lawful owner. A pawnbroker, individually and as president of a pawnbroker association, brought suit for declaratory judgment and injunctive relief challenging the rules.

¶{25} The trial court granted summary judgment for the city, which was upheld in the appellate court, but the Supreme Court reversed and entered judgment as a matter of law for the pawnbroker. *Wacksman v. Harrell*, 174 Ohio St. 338, 189 N.E.2d 146 (1963). The Supreme Court announced that pawnbrokers are licensed by the state and governed by R.C. 4727.01 to 4727.16 and that the city rules could not be enforced as they are violative of the pawnbroker's constitutional *and statutory rights*. *Id.* at syllabus.

¶{26} In addressing the city's claim that a thief cannot pass title to stolen property, the Court explained that this was not strictly true as one who purchases property from a thief in good faith has the right to possession of the property against all but the true owner. *Id.* at 340. The Court then stated that the existence of a state statute requiring a pawnbroker to display items to police does not authorize arbitrary seizure of the property by police without a warrant. *Id.* (and referring to violation of the procedure in R.C. 4727.08). In fact, even if the property is seized with a warrant, the Court expressed: "Pawned articles alleged to have been stolen may be taken from the pawnbroker through lawful procedure, if necessary, to be used in evidence against the thief in the criminal trial, *but, when that purpose is served, the pawnbroker is entitled to their return*." (Emphasis added). *Id.*[2]

¶{27} As to the city's rule giving the criminal judge power to declare ownership, the Supreme Court addressed the city's claim that the rule is valid under former R.C. 2933.28, which provided that if an accused is convicted, then property seized under a search warrant shall be returned to the owner. *Id.* at 341-342. The Court concluded that such provision would be an unconstitutional deprivation of property without due process if it were interpreted so that a criminal court could determine who should receive the property where the evidence was received from a pawnshop but another person claimed to be the owner. *Id.* at 342. *See also State v. Labriola*, 9th Dist. No.

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[2]This is similar to a holding by the United States Court of Appeals for the Ninth Circuit, which stated that a similar California statute implicitly recognizes that pawnbrokers have a legitimate possessory interest in the property and have the right to possess the property until ownership is resolved through compromise or civil litigation and thus after property is used as evidence, it should be returned to pawnbroker. *See G&G Jewelry, Inc. v. City of Oakland*, 989 F.2d 1093 (9th Cir.1993).

10861 (Feb. 9, 1983) (criminal court cannot deprive non-party towing company of property interest, where defendant asked for seized property back).

¶{28} The Supreme Court expressed that the statutory provision is for use when there is no third-party claimant, such as when the item is found in the possession of a thief, and it is inapplicable in the case where the item was possessed by a pawnbroker and there is now a claimed owner. *Wacksman*, 174 Ohio St. at 342. "[W]here, as here, diverse claims of ownership or possessory rights may arise, the section is not controlling, and the parties are relegated to the civil courts for a determination of their respective claims." *Id.* The *Wacksman* Court declared at page 342:

> The prosecution of a criminal case is strictly against the accused. Property rights in the subject matter of the alleged theft are not directly in issue nor are the proper parties before the court for the determination of such matter. In the criminal case the pawnbroker is afforded no opportunity to assert such property rights as he may have, and it is axiomatic that one may not be deprived of property in his possession in a proceeding to which he is not a party. Therefore, in the criminal prosecution of a person charged with stealing and pawning an allegedly stolen article, it is beyond the power and function of the judge to determine and adjudge the ownership of such property as between the pawnbroker and the one claiming to be the true owner. This is a matter for the civil courts in an appropriate action.

¶{29} Finally, the Court opined: "a reputable pawnbroker would voluntarily surrender pawned articles in his possession, where there is plain proof of their theft with a clear identification of the real owner; nevertheless the pawnbroker is entitled to test ownership and possessory rights in a civil action if he so elects." *Id.* at 342-343. This refutes the validity of the respondents' argument that it would be "a waste of time" for the claimed owner to have to file a civil suit when a criminal court could just order return to the person who claims they are the victim of a theft.

¶{30} The respondents proffer an argument on Crim.R. 26 that is akin to the city's argument on R.C. 2933.28 which was rejected by the Court in *Wacksman*. The

rule provides: "Physical property, other than contraband, as defined by statute, under the control of a prosecuting attorney for use as evidence in a hearing or trial should be returned to the owner at the earliest possible time." Crim.R. 26 (and also states that in order to facilitate the early return of such property, the court may order that photographs may be taken of the property and introduced as evidence at the hearing).

¶{31} As the Supreme Court held in *Wacksman*, the ability to return property to the owner (and use photographs for trial instead) does not mean the court can determine and adjudge the ownership of stolen property as between a pawnbroker and a claimed owner in a criminal prosecution of a thief. Rather, such is "beyond the power and function" of the judge in a criminal case as "this is a matter for the civil courts in an appropriate action." *See Wacksman*, 174 Ohio St. at 341.

¶{32} Therefore, by ordering Ace to return the property and thus determining ownership rights, the criminal court's exercise of power was unauthorized by law. The second element for a writ of prohibition is thus satisfied here.

ADEQUATE REMEDY IN ORDINARY COURSE OF LAW

¶{33} The third element for a writ of prohibition asks whether denying the writ would result in an injury for which no other adequate remedy exists in the ordinary course of law. *State ex rel. Harsh v. Oney*, 138 Ohio St.3d 192, 2014-Ohio-458, 5 N.E.3d 610, ¶ 6. The respondents claim that Ace should have appealed the May 16, 2014 denial of the motion to vacate instead of filing the June 2, 2014 petition for a writ of prohibition. They state that an extraordinary writ should not be used to prevent an erroneous judgment as it is not a substitute for a direct appeal. (It is noted here that the writ was not used to circumvent the time for appealing and that the docket does not show that Ace was served with the May 16 order.)

¶{34} Ace responds that it lacked standing to appeal because although it was aggrieved, it was not a party to the criminal case in which the April 4 order was made and thus in which the May 16 order was made. *See* App.R. 4(A) ("A party shall file the notice of appeal * * *"). Ace cites a case holding: "To have standing to appeal, a person must either have been a party to the case or have attempted to intervene as a party. A person not a party to the action has no right of direct appeal from an adjudication." *Lopez v. Veitran*, 1st Dist. No. C-110511, 2012-Ohio-1216, ¶ 10, citing

State ex rel. Lipson v. Hunter, 2 Ohio St.2d 225, 225, 208 N.E.2d 133 (1965). Ace also cites an Eleventh District case, which concluded that a third-party had no adequate remedy at law in a criminal case because any attempted appeal from the denial of a motion to intervene would have been dismissed on the grounds that the remedy lies in a separate action for a writ. *State ex rel. The Vindicator Printing Co. v. Watkins*, 11th Dist. No. 91-T-4555 (Dec. 31, 1991) (newspaper sought disclosure of documents), affirmed by Supreme Court in 66 Ohio St.3d 129, 609 N.E.2d 551 (1993) (without reviewing the finding of no adequate remedy at law).

¶{35} The Supreme Court reviewed a writ request where a petitioner asserted a lack of personal jurisdiction to issue a judgment due to service issues. The petitioner had filed a motion to vacate in the trial court. Instead of appealing the denial of the motion, the petitioner sought a writ of mandamus to compel vacation of the judgment. It was questioned whether the petitioner had an adequate legal remedy by way of an appeal from the denial of the motion to vacate. The Supreme Court then moved straight to the exception: that mandamus will lie regardless of whether there was a right to appeal where there is no jurisdiction. *State ex rel. Ballard v. O'Donnell*, 50 Ohio St.3d 182, 184, 553 N.E.2d 650 (1990) (and granted the writ). We do the same in this prohibition action, which has the same exception to the third factor.

PATENT & UNAMBIGUOUS LACK OF JURISDICTION

¶{36} As aforementioned, the adequate remedy at law factor is irrelevant if the trial court patently and unambiguously lacked jurisdiction to make the order of property transfer. *State ex rel. Harsh v. Oney*, 138 Ohio St.3d 192, 2014-Ohio-458, 5 N.E.3d 610, ¶ 6. This lacking jurisdiction can be that of subject matter jurisdiction or personal jurisdiction over a party, both of which are raised by Ace here. *See State ex rel. Doe v. Capper*, 132 Ohio St.3d 365, 2012-Ohio-2686, 972 N.E.2d 553; *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 235, 638 N.E.2d 541 (1994).

¶{37} As to subject matter jurisdiction, Ace asserts that the judge in a criminal case against a defendant has no subject matter jurisdiction to adjudicate the title of stolen property that is in the possession of a pawnshop. They rely on R.C. 4727.12 and *Wacksman* as set forth above, especially the *Wacksman* quote: "in the criminal prosecution of a person charged with stealing and pawning an allegedly stolen article,

it is beyond the power and function of the judge to determine and adjudge the ownership of such property as between the pawnbroker and the one claiming to be the true owner. This is a matter for the civil courts in an appropriate action." *Wacksman*, 174 Ohio St. at 342. *See also Akron Municipal Court v. Rucker*, 9th Dist. No. 24867, 2010-Ohio-1351, ¶ 7, 9 (finding criminal court lacked subject matter jurisdiction to order a towing company to return a seized vehicle where the towing company claimed a lien interest in the vehicle). *Compare State v. Labriola*, 9th Dist. No. 10861 (Feb. 9, 1983) (criminal court lacked "authority" to determine property rights to backhoe stored at towing company); *State v. Dudas*, 11th Dist. No. 2007-L-169, 2008-Ohio-3261, ¶19 (criminal court had no jurisdiction over a non-party to the criminal case so could not grant defendant's motion to order non-party to return property to him, which language suggests a lack of personal jurisdiction).

¶{38} The respondents state that a common pleas court has general subject matter jurisdiction in criminal cases under R.C. 2931.03 and to order the return of property to the owner under Crim.R. 26 and thus, regardless of whether the court exceeded its *authority* here, the court had *jurisdiction*. The respondents note that *Wacksman* did not specify that there was a lack of subject matter jurisdiction. The respondents then review the distinction between subject matter jurisdiction and a court's authority or jurisdiction over a particular case. *See, e.g., Bank of America, N.A. v. Kuchta*, __ Ohio St.3d __, 2014-Ohio-4275, __ N.E.3d __, ¶ 18 (three types of jurisdiction: personal jurisdiction, subject matter jurisdiction, and jurisdiction over a particular case), citing *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶ 12 (the third category of jurisdiction "encompasses the trial court's authority to determine a specific case within that class of cases that is within its subject matter jurisdiction" and that type of lacking jurisdiction merely renders the judgment voidable, not void).

¶{39} We turn, however, to Ace's claim that the trial court lacked personal jurisdiction. We begin with a review of *Capper*, where the Ohio Supreme Court granted a writ of prohibition. In that case, the Court addressed a statute that required a child to be a party to a parentage action unless good cause was shown and

complaint that failed to name the child and that contained no indication why the child was not named. *See Capper*, 132 Ohio St.3d 365.

¶{40} The Court concluded that the trial court patently and unambiguously lacked personal jurisdiction to order child to submit to genetic testing as the child was not named and served with summons, did not appear, and was not a party to the court proceedings. *Id.* at ¶ 13-15. After finding a patent and unambiguous lack of personal jurisdiction, the Court refused to address the alternative claim of lacking subject matter jurisdiction. *Id.* at ¶ 17 (stating that it would not issue an advisory opinion on subject matter jurisdiction). Due to the lack of personal jurisdiction, the Supreme Court granted the requested extraordinary relief in prohibition to prevent the trial court from exercising further jurisdiction and to compel the trial court to void the orders that were entered in that case. *Id.* at ¶ 18.

¶{41} As aforestated, the *Ballard* Court answered whether a writ of mandamus may issue compelling a judge to vacate a judgment and prejudicial findings made against a person who did not appear and was not a party in the proceedings. *Ballard*, 50 Ohio St.3d at 183. The person had filed a motion to vacate in the trial court which was denied, and then rather than appeal, the person sought an extraordinary writ of mandamus, which writ also involves the adequate remedy at law factor. *Id.*

¶{42} The Supreme Court discussed due process and pointed out that in order for a trial court to acquire jurisdiction, there must be proper service of summons or entry of appearance or the judgment is a nullity and void. *Id.* The Court stated that the record shows that relator was not a party in the trial court proceedings, was not served summons, and did not appear before the court (*except for purposes of the motion to vacate*). *Id.* at 184. The Court concluded that the trial court was thus without jurisdiction to render judgment against the relator and that the relator was entitled to vacation of the order and to a writ ordering such vacation. *Id.*

¶{43} Finally, in finding a due process violation to the rights of pawnbrokers where a criminal court eliminates their property rights and in concluding that such a task is for the court in a civil case, the *Wacksman* Court explained:

> "*The prosecution of a criminal case is strictly against the accused.*
> Property rights in the subject matter of the alleged theft are not directly in

> issue *nor are the proper parties before the court for the determination of such matter*. In the criminal case the pawnbroker is afforded no opportunity to assert such property rights as he may have, and it is axiomatic that one may not be deprived of property in his possession *in a proceeding to which he is not a party*."

(Emphasis added.) *Wacksman*, 174 Ohio St. at 342.

¶{44} As resolved supra when discussing the second factor, the court in a criminal case could not order Ace to return property that it purchased, and that analysis is incorporated here as well. Ace was not a party to the criminal case. Ace was not served with any document by the court. The criminal court clearly lacked personal jurisdiction to enter the April 4, 2014 order against Ace, and the lack of such personal jurisdiction remained as to the May 16, 2014 reiteration of the order against Ace.

¶{45} In conclusion, the criminal court patently and unambiguously lacked personal jurisdiction over the pawnbroker and was unauthorized by law to declare ownership of property purchased by the pawnshop or order the pawnbroker to transfer said property to another person (who was also not a party to the action). Although the criminal court could issue an order under Crim.R. 26, allowing photographs to be submitted in lieu of actual evidence and stating that the evidence is released, the court could not rule that one non-party is the owner over another non-party. This is the function of the court in a potential civil case, which court would obtain personal jurisdiction only after an action is instituted and the pawnbroker is named as a party and served with summons.

¶{46} We hereby issue a writ of prohibition against Respondent Mahoning County Common Pleas Court Judge Maureen A. Sweeney, the originator of the order being prohibited here, and also against Visiting Judge Thomas P. Pokorny, who temporarily acted for the first judge and reiterated her order while denying a motion to vacate. The respondents are prohibited from enforcing the April 4, 2014 and May 16, 2014 judgments against Ace and are to strike those orders as void.

¶{47} Final Order. Clerk to serve notice as provided by the Civil Rules. Costs taxed against Respondents.

Vukovich, J., concurs.
Donofrio, J., concurs.
Waite, J., concurs.