Third District Court of Appeal

State of Florida

Opinion filed April 29, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-0249
Lower Tribunal No. 19-8437

Point Conversions, LLC,
Petitioner,

vs.

Pfeffer & Marin Holdings, LLC,
Respondent.

A Case of Original Jurisdiction – Mandamus.

Ferguson Law P.A., and Kenneth W. Ferguson (Ft. Lauderdale), for petitioner.

Shutts & Bowen, LLP and Joseph W. Bain, Matthew R. Chait and Sean M. Smith (West Palm Beach), and Daniel E. Nordby (Tallahassee), and Garrett A. Tozier (Tampa), for respondent.

Before LINDSEY, HENDON, and MILLER, JJ.

LINDSEY, J.

Petitioner Point Conversions, LLC seeks a writ of mandamus to compel the trial court to exercise subject-matter jurisdiction over various state law claims, which are based on alleged infringements of Point Conversions' intellectual property rights. Because an adequate, alternative remedy exists, we deny the Petition.[1]

Point Conversions challenges the trial court's order dismissing its complaint, *without prejudice to amend*, for lack of subject-matter jurisdiction. Point Conversions did not amend its complaint, and the trial court has not yet entered a final order of dismissal. This is not a situation that warrants the exercise of our extraordinary writ jurisdiction. As such, Point Conversions is not entitled to relief.

It is blackletter law that "[t]o be entitled to a writ of mandamus, [1] the petitioner must have a clear legal right to the requested relief, [2] the respondent must have an indisputable legal duty to perform the requested action, and [3] the petitioner must have no other adequate remedy." E.g., Bailem v. State, 984 So. 2d 604, 606 (Fla. 3d DCA 2008) (citations omitted); see also Huffman v. State, 813 So.

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[1] Mandamus is appropriate only if a petitioner does not have any adequate administrative or legal remedies. See Philip J. Padovano, Fla. App. Prac. § 30:2 (2019 ed.) ("Mandamus is not appropriate if there is another adequate remedy. Generally, a party who has failed to exhaust other administrative or legal remedies is not entitled to a writ of mandamus."). Although mandamus is itself a legal remedy, "the granting of the writ is governed by equitable principles. Just as equitable remedies are unavailable when there is an adequate remedy at law, so relief by mandamus is unavailable unless no other adequate remedy exists." Kellar v. Moore, 820 So. 2d 1015, 1016 (Fla. 1st DCA 2002) (citations and internal quotation marks omitted).

2d 10, 11 (Fla. 2000); 35 Fla. Jur. 2d Mandamus and Prohibition § 5 ("Entitlement to mandamus relief, generally").[2] We emphasize here the requirement that the petitioner must show the absence of any other adequate remedy.[3] See Wuesthoff Mem'l Hosp., Inc. v. Fla. Elections Com'n, 795 So. 2d 179, 180 (Fla. 1st DCA 2001) ("We find it unnecessary to determine whether [Petitioner] has satisfied the first two elements because we conclude that it has not established that it has no other adequate remedy.").

Since mandamus is an extraordinary writ, the adequate remedy requirement has long been recognized as essential to ensure that the writ only be invoked in extraordinary circumstances. Indeed, this requirement can be traced at least as far back as the beginning of the 1700s. See Case of Andover, 7 Eng. Rep. 1143, 1143; 2 Salk. 43, 43 (K.B. 1701) ("[I]t is rare to grant [mandamus] where one has any other remedy . . . ."). The adequate remedy requirement is perhaps even more important

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[2] These firmly established requirements have been articulated for hundreds of years. See Rex v. Barker, 97 Eng. Rep. 823, 824; 3 Burr. 1265, 1266 (K.B. 1762). ("Where there is a right to execute an office, perform a service, or exercise a franchise . . . and a person is kept out of possession, or dispossessed of such right, and has no other specific legal remedy; this Court ought to assist by a mandamus . . . .").

[3] Because the existence of an adequate remedy is dispositive, we do not address the concurrence's theory—a theory neither party raised—that the decisive factor is the point at which the lower tribunal determines whether it has subject-matter jurisdiction. Here, no such final determination has been made. Rather, the trial court has dismissed the Petitioner's complaint *without prejudice to amend.*

today, where rights and remedies are more fully developed and defined than they were during the early development of the common law.

Point Conversions argues that mandamus is properly used to test the lower tribunal's determination that it lacks jurisdiction. But as the authorities Point Conversion cites make clear, this is only true when a petitioner "has no other legal method for obtaining relief." See Pino v. Dist. Court of Appeal, Third Dist., 604 So. 2d 1232, 1233 (Fla. 1992) (citing Caldwell v. Estate of McDowell, 507 So. 2d 607 (Fla. 1987)). Here, Point Conversions indisputably has an adequate remedy to challenge the trial court's ultimate determination—*if and when such determination is made*—that it lacks subject-matter jurisdiction. The most obvious remedy would be to appeal a final order of dismissal. See, e.g., Welch v. State, 95 So. 751 (Fla. 1923) ("Mandamus can only be resorted to where there is no other adequate remedy to accomplish the purpose sought thereby; and where a remedy by appeal . . . is competent to afford full and ample relief, mandamus will not lie."). We therefore deny Point Conversions' Petition for Writ of Mandamus.

Petition denied.

MILLER, J. (specially concurring).

Although I concur in the conclusion that mandamus is unwarranted, to the extent the majority relies solely upon the determination that petitioner must avail itself of an alternative remedy, in the narrow context presented, I am less sanguine.[4] Thus, I respectfully write separately to clarify our existing jurisprudence.

Petitioner seeks a writ of mandamus compelling the lower tribunal to reinstate its dismissed claims, contending,

> the trial court has refused to exercise jurisdiction over a cause of action within its jurisdiction in disregard for [petitioner's] clear legal right to access to the courts, which "cannot be countenanced [in light of] [a]rticle I, [s]ection 21 of the Florida Constitution," and [petitioner] continues to suffer irreparable harm as a result. Jacobs Wind Elec. Co. Inc. v. Dep't of Transp., 626 So. 2d 1333, 1337 (Fla. 1993).

Following a comprehensive hearing on respondent's motion to dismiss for want of jurisdiction, the lower tribunal dismissed the case, without prejudice, and granted leave to amend the complaint. Petitioner elected not to amend, and, instead, sought mandamus relief.

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[4] "To ensure that mandamus remains an extraordinary remedy, [the petitioning parties] must show that they lack adequate alternative means to obtain the relief they seek." Mallard v. U.S. Dist. Court for S. Dist. of Iowa, 490 U.S. 296, 309, 109 S. Ct. 1814, 1822, 104 L. Ed. 2d 318 (1989) (citations omitted). Moreover, "exhaustion of remedies is broadly stated as the withholding of judicial relief on a claim or dispute cognizable by an administrative body until the administrative process has run its course." Gottschalk v. Hegg, 228 N.W.2d 640, 642 (S.D. 1975) (citing Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 58 S. Ct. 459, 82 L. Ed. 638 (1939); Grosz v. Conser, 45 N.W.2d 734 (S.D. 1951)).

"Mandamus is an extraordinary remedial process which is awarded, not as a matter of right, but in the exercise of a sound judicial discretion." Duncan Townsite Co. v. Lane, 245 U.S. 308, 311, 38 S. Ct. 99, 101, 62 L. Ed. 309 (1917). "In this country the courts empowered to exercise jurisdiction by mandamus are generally fixed by the constitutions of the various states, or by legislative enactment not inconsistent therewith." Commonwealth ex rel. Elkin v. Barnett, 48 A. 976, 981 (Pa. 1901) (citation omitted). Under Florida law, mandamus jurisdiction is constitutionally derived, and adheres to the traditions developed by the King's bench under English common law. See Art. V, § 3(b)(8), Fla. Const.; Art. V, § 4(b)(3), Fla. Const.; Art. V, § 5(b), Fla. Const.; Fla. R. App. P. 9.030(a)(3); Fla. R. App. P. 9.030(b)(3); Fla. R. App. P. 9.030(c)(3). The High Court of Justice exerted "significant collateral control over inferior and rival courts through the use of prerogative writs." Pulliam v. Allen, 466 U.S. 522, 532, 104 S. Ct. 1970, 1976, 80 L. Ed. 2d 565 (1984). Nonetheless, this early tribunal narrowly curtailed mandamus to obliging duty-bound action in the face of inaction. State ex rel. Laclede Bank v. Lewis, 76 Mo. 370, 379 (1882).

An oft-cited illustration of this appears in the case of The King v. The Justices of Kent, 14 East. R. 395. There the court determined:

> mandamus would [b]e to compel the justices to hear and pass on an application of the journeymen millers, to rate their wages under an act of Parliament, which the justices had solemnly determined did not confer on them that power, and for which reason they had declined to

> hear the case on the merits . . . Lord Ellenborough said, "We do not, however, by granting this mandamus, at all interfere with the exercise of that discretion which the Legislature meant to confide to the justices of the peace in session. We only say that they have a discretion to exercise; and therefore they must hear the application: but having heard it, it rests with them to act or not upon it as they think fit."

Cowan v. Fulton, 64 Va. 579, 584-85 (1873).

Consistent with these principles, as early as 1883, the United States Supreme Court issued a series of opinions recognizing that mandamus was the proper vehicle to challenge the abject failure by a lower tribunal to exercise jurisdiction over a given action. Ex parte Bradstreet, 32 U.S. 634, 648, 8 L. Ed. 810 (1833); see also Ex parte Parker, 120 U.S. 737, 743, 7 S. Ct. 767, 769, 30 L. Ed. 818 (1887) ("This presents a case for the exercise of the jurisdiction of this court in mandamus according to the principles and practice applicable thereto. That writ properly lies in cases where the inferior court refuses to take jurisdiction where by law it ought so to do."); Crawford v. Haller, 111 U.S. 796, 797, 4 S. Ct. 697, 697, 28 L. Ed. 602 (1884) ("The dismissal of the writ was a refusal to hear and decide the cause. The remedy in such a case, if any, is by mandamus to compel the court to entertain the case and proceed to its determination, not by writ of error to review what has been done.") (citations omitted). The decisions declined to impute any alternative remedies requirement. Indeed, no such remedies existed, as each of the cases lay dormant by virtue of the fact that the presiding judge, serving as the "gatekeeper to the judicial process,"

unfathomably refused to exercise discretion and render ruling. Bell v. Crump, 651 So. 2d 975, 979 (La. Ct. App. 1995).

In the progeny of cases spawned by that era, our contemporary courts have continued to articulate the following demarcation:

> If the court refuses *from the beginning* to take jurisdiction of a case, upon the mistaken theory that it has no jurisdiction, mandamus will lie to compel it to proceed, but if it takes jurisdiction, and . . . judicially determines, although erroneously, that it has no jurisdiction, mandamus will not lie.[5]

Mandamus to Compel Court to Assume or Exercise Jurisdiction Where it has Erroneously Dismissed the Cause or Refused to Proceed on the Ground of Supposed Lack of Jurisdiction, 4 A.L.R. 582 (1919) (emphasis added); see, e.g., Ex parte Parker, 131 U.S. 221, 226, 9 S. Ct. 708, 709, 33 L. Ed. 123 (1889) ("The right of mandamus lies, . . . where an inferior court refuses to take jurisdiction when by law it ought to do so, or where, having obtained jurisdiction, it refuses to proceed in its exercise. It does not lie to correct alleged errors in the exercise of its judicial discretion.") (citations omitted). Thus, it is clear that mandamus may be properly utilized to compel inferior tribunals to faithfully execute their legitimate powers "whenever the same are either denied, or delayed." Thomas Tapping, The Law and

[5] Respondent adeptly notes this distinction, submitting "[t]he issue of whether the lower tribunal possesses subject matter jurisdiction is distinguishable from whether the trial court acknowledged its subject matter jurisdiction but failed to comply with its nondiscretionary ministerial duty, such as the refusal to proceed with a bench trial when both parties had waived a jury trial."

Practice of the High Prerogative Writ of Mandamus, as it Obtains Both in England, and in Ireland 154 (1853). Conversely, "mandamus does not lie to coerce the discretion of a subordinate tribunal." Ex parte Bradstreet, 32 U.S. at 646.

Here, the lower tribunal did not decline from the onset to "take jurisdiction" of the case. Instead, it reviewed the complaint, afforded the parties notice and an opportunity to be heard, and, ultimately, rendered a judicial determination that the pleading, as penned, was deficient to instill jurisdiction. See State v. Petteway, 96 Fla. 74, 76, 117 So. 696, 696 (Fla. 1928) ("Thus the present proceeding by mandamus becomes an attempt . . . to direct the manner in which [the trial court] shall exercise [its] jurisdiction, by commanding" a specific ruling.). Hence, the tribunal "acted judicially," and if the writ issued, the court could not "comply with the mandate without a modification or reversal of its" decree. Mandamus to Compel Court to Assume or Exercise Jurisdiction Where it has Erroneously Dismissed the Cause or Refused to Proceed on the Ground of Supposed Lack of Jurisdiction, 4 A.L.R. 582 (1919); see also State ex rel. N. St. Lucie River Drainage Dist. v. Kanner, 152 Fla. 400, 403, 11 So. 2d 889, 890 (1943) ("[M]andamus is the proper remedy to compel a court to exercise its jurisdiction when such court possesses jurisdiction and refuses to exercise it, but mandamus cannot be maintained to control or direct the manner in which such court shall act in the lawful exercise of its jurisdiction.").

Under these circumstances, the petition, on its face, seeks to "control [the] discretion [of the lower court] while acting within its jurisdiction." Ex parte Brown, 116 U.S. 401, 402, 6 S. Ct. 387, 387, 29 L. Ed. 676 (1886); see Coral Springs Tower Club II Condo. Ass'n, Inc. v. Dizefalo, 667 So. 2d 966, 967 (Fla. 4th DCA 1996) ("Mandamus is not available to mandate the doing or undoing of a discretionary act or a merely erroneous decision.") (citations omitted). Accordingly, I cannot conclude the lower tribunal unconstitutionally deprived petitioner of access to the courts, and I agree that mandamus does not lie.