

[Cite as *State ex rel. Williams v. Kray*, 2010-Ohio-5378.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95912

**STATE OF OHIO EX REL.,
SYLVETTE WILLIAMS**

RELATOR

vs.

MAGISTRATE RICHARD KRAY, ET AL.

RESPONDENTS

**JUDGMENT:
WRIT DENIED**

WRIT OF PROHIBITION AND
ALTERNATIVE WRIT OF PROHIBITION
MOTION NO. 438653
ORDER NO. 438712

RELEASE DATE: October 29, 2010

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MARY J. BOYLE, J.:

The relators, Sylvette Williams and Roger Williams, have filed a verified complaint for a writ of prohibition and an alternative writ of prohibition. The relators seek to prevent the respondents, Judge Jennifer Weiler, Magistrate Richard Kray, and the Garfield Heights Municipal Court, from proceeding to trial in an underlying action for forcible entry and detainer. Specifically, the relators seek to “prevent the [respondents] from rendering a verdict otherwise than by a jury determination.” For the following reasons, we decline to issue an alternative writ of prohibition or a writ of prohibition on behalf of the relators.

On June 14, 2010, a complaint in forcible entry and detainer was filed in Garfield Heights Municipal Court Case No. CV-1001757. The relators were named as defendants. On August 18, 2010, the relators, pursuant to

R.C. 1923.10, posted a bond in the amount of \$300 vis-a-vis their request for a jury trial. On October 25, 2010, the relators filed their complaint for an alternative writ of prohibition and a writ of prohibition. The complaint is premised upon the claim that the request for a jury trial, per R.C. 1923.10, prevents the respondents from conducting a “bench trial” on November 5, 2010.

In order for this court to grant a writ of prohibition, the relators must establish that the respondents: (1) will or are about to exercise judicial or quasi-judicial power; (2) the exercise of such power is unauthorized by law; and (3) that the denial of the writ will cause injury for which no other adequate remedy exists in the ordinary course of the law. *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 1997-Ohio-2340, 686 N.E.2d 267; *State ex rel. Largent v. Fisher* (1989), 43 Ohio St.3d 160, 540 N.E.2d 239. Furthermore, a writ of prohibition must be employed with great caution and shall not be issued in doubtful cases. *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas* (1940), 137 Ohio St. 273, 28 N.E.2d 641.

The Supreme Court of Ohio, with regard to the second and third elements of a complaint in prohibition, has established that if a trial court possesses general subject-matter jurisdiction over a cause of action, the trial court possesses the authority to determine its own jurisdiction and an

adequate remedy at law exists to challenge an adverse decision. Such a remedy is an appeal to this court.

The Supreme Court of Ohio, however, has established that “[w]here an inferior court patently and unambiguously lacks jurisdiction over the cause * * * prohibition will lie to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions.” *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 1995-Ohio-148, 656 N.E.2d 1288, citing *State ex rel. Lewis v. Moser*, 72 Ohio St.3d 25, 28, 1995-Ohio-148, 647 N.E.2d 155. Thus, if a trial court’s lack of jurisdiction is patent and unambiguous, the availability of an adequate remedy at law is immaterial. *State ex rel. Rogers v. McGee Brown*, 80 Ohio St.3d 408, 1997-Ohio-334, 686 N.E.2d 1126.

In the case sub judice, the relators have failed to demonstrate that respondents are patently and unambiguously without jurisdiction to proceed with the trial, be it by jury or bench, in Garfield Heights Municipal Court Case No. CV-1001757. A municipal court possesses initial subject-matter jurisdiction over a case involving a claim for forcible entry and detainer. R.C. 1901.181; R.C. 1923.01; *State ex rel. Brady v. Pianka*, 106 Ohio St.3d 147, 2005-Ohio-4105, 832 N.E.2d 147; *State ex rel. Carro v. Weiler* (May 17, 2001), Cuyahoga App. No. 78760.

In addition, the respondents possess the authority to determine their own jurisdiction, and the relators are permitted to challenge jurisdiction by way of an appeal. *State ex rel. Shaffer v. Russo*, Cuyahoga App. No. 89822, 2007-Ohio-2220. Finally, the relators may have waived their right to a jury trial, even after filing a jury demand, by participating in any hearing before the respondents without objecting to the lack of a jury. *Nenadal v. Landerwood Co.* (May 12, 1994), Cuyahoga App. No. 65428.

Accordingly, we deny the relator's request for an alternative writ of prohibition and decline to issue a writ of prohibition. Relators to pay costs. It is further ordered that the clerk shall serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

Writ denied.

MARY J. BOYLE, JUDGE

SEAN C. GALLAGHER, A.J., and
MARY EILEEN KILBANE, J., CONCUR