

[Cite as *Fradette v. Gold*, 2018-Ohio-2744.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107003

CAROL A. FRADETTE

RELATOR

vs.

**HONORABLE ROSEMARY
GRIDINA GOLD, ET AL.**

RESPONDENTS

**JUDGMENT:
WRIT DENIED**

Writ of Prohibition
Motion No. 517047
Order No. 517747

RELEASE DATE: July 6, 2018

FOR RELATOR

Joseph G. Stafford
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ATTORNEYS FOR RESPONDENTS

**For Honorable Rosemary Gridina Gold
Michelle C. Edwards, Magistrate**

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EILEEN A. GALLAGHER, A.J.:

{¶1} Relator, Carol A. Fradette (“Carol”), seeks a writ of prohibition that would halt respondent judge and respondent magistrate from exercising jurisdiction over a post-decree motion to terminate spousal support filed in Cuyahoga C.P. No. DR-96-250124. Carol argues the double-dismissal rule precludes the respondents from entertaining a fourth motion to terminate support filed by Carol’s former husband, respondent Joseph J. Fradette (“Joseph”). Respondent judge and magistrate moved for summary judgment arguing that the court has continuing jurisdiction to hear post-decree motions including the aforementioned motion to terminate spousal support. We grant the respondents’ motion for summary judgment.

Facts and Procedural Background

{¶2} Joseph and Carol obtained a divorce decree in 1999. As part of the decree, Joseph was required to pay approximately \$1100 per month in spousal support that would only terminate on the death or cohabitation/remarriage of Carol. He was also required to maintain life insurance partially payable to Carol. Joseph filed three previous motions to terminate support over the years, but they were all voluntarily dismissed or withdrawn prior to judgment.¹ Joseph’s most recent motion was filed July 7, 2017. The motion alleged that significant changes in Joseph’s health and income made paying support impossible. On the day that a hearing was to take place before a magistrate, Carol filed a motion to dismiss arguing the double-dismissal rule applied and that the motion should be dismissed. The hearing was postponed so the respondent judge could rule on the motion. On March 8, 2018, the respondent judge denied the motion to dismiss and reset the matter for hearing on April 6, 2018.

¹ Motions were filed in 2009, 2012, and 2016.

{¶3} Carol then filed the instant complaint on March 30, 2018, seeking to prevent the respondent judge and magistrate from exercising further jurisdiction in the case.

Law and Analysis

{¶4} A writ of prohibition will issue to prevent a tribunal from proceeding in a matter in which it is not authorized to hear and determine, or where it seeks to exercise jurisdiction it does not have. *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 686 N.E.2d 267 (1997). Where a court possesses general subject-matter jurisdiction over a pending action, a writ of prohibition will not issue to prevent an error of law. *State ex rel. Bell v. Pfeiffer*, 131 Ohio St.3d 114, 2012-Ohio-54, 961 N.E.2d 181; *State ex rel. Winnefeld v. Court of Common Pleas of Butler Cty.*, 159 Ohio St. 225, 112 N.E.2d 27 (1953). If a court patently and unambiguously lacks general subject-matter jurisdiction, a writ of prohibition will issue to correct the results of prior unauthorized actions. *State ex rel. Cordray v. Marshall*, 123 Ohio St.3d 229, 2009-Ohio-4986, 915 N.E.2d 633. However, if a court does not patently and unambiguously lack general subject-matter jurisdiction, prohibition will not issue and the issue of jurisdiction must be addressed through an appeal. *State ex rel. Bradford v. Trumbull Cty. Court*, 64 Ohio St.3d 502, 597 N.E.2d 116 (1992); *State ex rel. Pearson v. Moore*, 48 Ohio St.3d 37, 548 N.E.2d 945 (1990).

{¶5} Carol argues that the double-dismissal rule embodied in Civ.R. 41(A) prohibits respondent judge and magistrate from exercising jurisdiction over the current and, by extension, any future motion to terminate support filed by Joseph.²

²In her petition, Carol asserted that the previous motions were all based on the same facts. A review of the motions attached to the petition, however, reveals the motions requested modification or termination based on specific life events that differ from motion to motion. Therefore, Carol essentially seeks to prohibit any future motion to terminate support no matter the reason.

{¶6} Civ.R. 41(A)(1) provides a plaintiff with the means to voluntarily dismiss all claims asserted in an action prior to the commencement of trial. The last sentence of this rule indicates that this road may only be traveled once: “Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits of any claim that the plaintiff has once dismissed in any court.” Civ.R. 41(A)(1). *See also Olynyk v. Scoles*, 114 Ohio St.3d 56, 2007-Ohio-2878, 868 N.E.2d 254, _ 10.

{¶7} Here, Joseph previously withdrew post-decree *motions*, not claims. This court has previously expressed doubt as to whether Civ.R. 41 applies to the dismissal of motions rather than actions. *Reinhard v. Reinhard*, 8th Dist. Cuyahoga No. 95000, 2011-Ohio-343, ¶ 17 (“We are not convinced that Civ.R. 41 applies to motion practice because it is entitled ‘Dismissal of actions’ and speaks specifically to dismissals of causes of actions and counterclaims”).

{¶8} Even if the rule somehow applied, the respondent judge and magistrate have continuing jurisdiction to entertain post-decree motions based on changed circumstances and a writ of prohibition is not the proper vehicle for challenging a court’s ability to entertain such motions.

{¶9} This court addressed a similar question in another action for a writ of prohibition. We addressed the continuing jurisdiction of the domestic relations court to hear post-judgment motions, finding

the relator has not established the requisites for prohibition. This court entertains a doubt as to whether the principle of termination of jurisdiction applies to post-decree enforcement motions, especially in light of the continuing jurisdiction

of the domestic relations court. This issue should be resolved on appeal on a full record. Thus prohibition is inappropriate.

State ex rel. Soukup v. Celebrezze, 8th Dist. Cuyahoga No. 72008, 1998 Ohio App. LEXIS 484, 10 (Feb. 12, 1998). Law and equity require that domestic relations courts retain jurisdiction to adjust decrees to account for changes that occur in the lives of the parties and those affected by its decrees. Specifically, Civ.R. 75(J) provides domestic relations courts with continuing jurisdiction to adjudicate post-judgment matters such as the motion to terminate support filed by Joseph.

{¶10} Carol has failed to show that the respondent judge and magistrate lack subject-matter jurisdiction to adjudicate the underlying motion to terminate spousal support. The domestic relations court has continuing jurisdiction to determine post-decree motions. Therefore, a writ of prohibition is not the appropriate means to determine the question raised in this case. *Soukup* at _ 10.

{¶11} Accordingly, we grant the respondents' motion for summary judgment. Costs to relator. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶12} Writ denied.

EILEEN A. GALLAGHER, ADMINISTRATIVE JUDGE

MARY J. BOYLE, J., and
KATHLEEN ANN KEOUGH, J., CONCUR