

[Cite as *State ex rel. Novak, Pavlik, Deliberato, L.L.P. v. Ambrose*, 2018-Ohio-2951.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 107028

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**STATE OF OHIO, EX REL.  
NOVAK, PAVLIK, DELIBERATO, L.L.P., ET AL.**

RELATORS

vs.

**JUDGE DICK AMBROSE**

RESPONDENT

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**JUDGMENT:  
WRIT DENIED**

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Writ of Prohibition  
Motion No. 517371  
Order No. 518447

**RELEASE DATE:** July 25, 2018

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SEAN C. GALLAGHER, J.:

{¶1} Relators, the law firm of Novak L.L.P., formerly known as Novak, Pavlik, Deliberato, L.L.P., William J. Novak, Thomas C. Pavlik, and Matthew D. Deliberato, seek a writ of prohibition to stop respondent judge from exercising jurisdiction over the individual defendants in *PSIC v. Novak, L.L.P.*, Cuyahoga C.P. No. CV-16-867801. We grant respondent judge's motion for summary judgment and deny the writ.

#### BACKGROUND

{¶2} The underlying common pleas court case involves a dispute between a law firm and its malpractice insurance provider over the payment of a \$10,000 deductible. The genesis of the dispute lies in an insurance claim paid by the company on behalf of the law firm. The law firm failed to pay the \$10,000 deductible set forth in the policy for such a claim. As a result, the insurance company, in order to resolve the matter and pursuant to express policy terms, paid the deductible amount, and then sued the firm and its attorneys to collect the deductible.

{¶3} The collection case spanned the better part of two years without resolution. A jury found in favor of the insurance company and awarded the insurance company \$10,000 for the deductible, plus \$103,479 in collection expenses. The respondent judge entered a judgment against the law firm with those terms on March 1, 2018.

{¶4} At the conclusion of this case, relators filed the instant action to prohibit respondent judge from continuing to exercise jurisdiction over the individual attorneys involved in the case.

#### STANDARD FOR A WRIT OF PROHIBITION

{¶5} In order to demonstrate entitlement to a writ of prohibition, one must show: (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*, 43 Ohio St.3d 160, 540 N.E.2d 239 (1989). “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.*, 153 Ohio St. 64, 65, 90 N.E.2d 598 (1950).

{¶6} Courts must not issue such a writ in a doubtful case. *State ex rel. Merion v. Court of Common Pleas*, 137 Ohio St. 273, 28 N.E.2d 641 (1940). However, when it is clear that a court patently and unambiguously is without jurisdiction to act whatsoever, a writ should issue without regard to whether an alternative adequate remedy exists. *State ex rel. Tilford v. Crush*, 39 Ohio St.3d 174, 529 N.E.2d 1245 (1988). We view these guideposts through the lense of the summary judgment standard set forth in Civ.R. 56(C).

## ANALYSIS

{¶7} There is no dispute that respondent judge is exercising judicial power. The dispute centers on whether that exercise of power is unauthorized by law. Relators argue that respondent judge patently and unambiguously lacks jurisdiction. This argument is built around the presumption that sections of the Ohio Uniform Partnership Act, codified in R.C. 1776.01 et seq., precludes individual liability for the debts of a limited liability partnership in this case. Specifically, relators point to R.C. 1776.36(C), which provides

[a]n obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a partner.

{¶8} Relators fail to contemplate the limiting language in R.C. 1776.36(C). The “solely by reason of being or acting as a partner” language indicates why this provision may not apply to the present case.

{¶9} According to the contract for insurance attached to relators’ brief in opposition to summary judgment, the deductible provision set forth in Section IV, paragraph three, provides that if the named insured, the law firm, fails to pay the deductible, then the insured, the individual attorneys, are jointly and severally liable for that amount. Without deciding the issue raised, based on that alone, the trial court may have properly exercised jurisdiction over William Novak and Thomas Pavlik. They were insureds under the contract. Further, “insured” is defined under Section V, paragraph nine, to mean, among other things, any partner of the law firm. Therefore, Matthew Deliberato may properly fall within the definition of insured under the contract, and the trial court may have properly exercised jurisdiction over him.

{¶10} Section VII, paragraph 16 provides that only the named insured, the law firm, is responsible for collection costs. However, the lack of an enforceable right to recover the *costs of collection* of the deductible from the individual attorneys is not the bounds of the court’s jurisdiction. Under the contract, the individual attorneys may be jointly and severally liable for the deductible. Therefore, the court may have properly exercised jurisdiction over these

defendants. The trial court has not ignored clear statutory dictates that would preclude judgment or even jurisdiction over these individuals.

{¶11} The documents submitted in the underlying court case indicate that the respondent judge may have jurisdiction over the individual attorneys in this case. Therefore, respondent judge does not patently and unambiguously lack jurisdiction.

{¶12} Relators also have an adequate remedy at law.

{¶13} Relators argue in their brief in opposition to the motion for summary judgment that they have no adequate remedy because the trial court has issued no final order in the case as to the individual defendants. The respondent judge's order in the case awarding the insurance company more than \$113,000 is only against the law firm, not the individual attorney defendants.

Relators argue that because there is no order as to the individual defendants, they will remain trapped in this litigation, potentially forever.

{¶14} This is not a problem that a writ of prohibition addresses. Lack of a final order may be resolved by filing a motion in the trial court seeking the issuance of a final order. If no order is forthcoming, a writ of procedendo may be appropriate.

{¶15} This also does not demonstrate the lack of an adequate remedy. To constitute an adequate remedy, the remedy must be "complete, beneficial, and speedy." *State ex rel. Ullmann v. Hayes*, 103 Ohio St.3d 405, 2004-Ohio-5469, 816 N.E.2d 245, ¶ 8. "[C]ontentions that appeal from any subsequent adverse final judgment would be inadequate due to time and expense are without merit." *State ex rel. Lyons v. Zaleski*, 75 Ohio St.3d 623, 626, 665 N.E.2d 212 (1996), citing *Whitehall ex rel. Wolfe v. Ohio Civ. Rights Comm.*, 74 Ohio St.3d 120, 124, 656 N.E.2d 684 (1995); *State ex rel. Gillivan v. Bd. of Tax Appeals*, 70 Ohio St.3d 196, 200, 638 N.E.2d 74 (1994).

{¶16} The Supreme Court of Ohio has stated,  
[i]t is established law in Ohio that “[a] court having general jurisdiction of the subject matter of an action has authority to determine its own jurisdiction on the issue raised, and a party challenging its jurisdiction has a remedy at law in appeal from an adverse holding of the court that it has such jurisdiction, and may not maintain a proceeding in prohibition to prevent the prosecution of such action.”

*State ex rel. Bd. of Cty. Commrs. v. Court of Common Pleas*, 54 Ohio St.2d 354, 356, 376 N.E.2d 1343 (1978), quoting *State ex rel. Miller v. Court of Common Pleas*, 151 Ohio St. 397, 86 N.E.2d 464 (1949), paragraph three of the syllabus.

{¶17} A timely appeal is the appropriate avenue to review respondent judge’s exercise of jurisdiction over the individual attorneys.

{¶18} This court finds that the respondent judge could have jurisdiction based on the contract for insurance and the liability imposed on the individual attorneys within its provisions. Given that, relators have an adequate remedy at law in the way of an appeal from a final entry of judgment in the underlying case. This court can properly decide in an appeal, on a full record, whether the individual attorneys and partners in a law firm can be individually liable to recover the deductible and collection expenses.

{¶19} Accordingly, this court grants respondent's dispositive motion and denies the application for a writ of prohibition. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶20} Writ denied.

SEAN C. GALLAGHER, JUDGE

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MARY J. BOYLE, J., and  
EILEEN A. GALLAGHER, A.J., CONCUR