[Cite as *State ex rel. Nichols v. Russo,* 2018-Ohio-3416.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107508

STATE OF OHIO, EX REL.
ESTATE OF ROBERT NICHOLS

RELATOR

vs.

THE HONORABLE JUDGE NANCY M. RUSSO

RESPONDENT

JUDGMENT:
COMPLAINT DISMISSED

Writs of Prohibition and Mandamus
Order No. 520002

RELEASE DATE: August 9, 2018

ATTORNEY FOR RELATOR

Edward J. Heben, Jr.
Heben Law, L.L.C.
348 Meadow Oaks Trail
Medina, Ohio 44256

ATTORNEY FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

PATRICIA ANN BLACKMON, J.:

{¶1} Relator, the estate of Robert Nichols, by and through its executor, Mark Nichols, requests that writs of prohibition and mandamus be issued against respondent judge, Nancy M. Russo. Sua sponte, we dismiss the complaint.[1]

Background

{¶2} In the complaint, relator asserts that the estate of Robert Nichols is a defendant in an action pending before the respondent judge in *Internatl. Total Servs., Inc. v. Nichols*, Cuyahoga C.P. No. CV-16-858361.[2] On May 31, 2016, a default judgment was entered against relator after he failed to file an answer or other pleading in the case. Approximately four months later, he filed a Civ.R. 60(B) motion for relief from judgment. Respondent judge denied the motion without holding a hearing. Relator appealed that determination to this court.

{¶3} We reversed the entry of default judgment and remanded the case to the trial court. *Internatl. Total Servs., Inc. v. Nichols*, 8th Dist. Cuyahoga No. 105182 (Nov. 9, 2017) ("*Nichols I*"). Importantly, we did not order the trial court to enter judgment in Nichols's favor on remand. We found that the trial court erred in denying the motion for relief from judgment without holding a hearing and in denying the motion, and the case was remanded. Respondent judge scheduled an August 14, 2018 hearing on the motion for relief from judgment. After respondent judge denied a motion to enter judgment in relator's favor, he commenced this original action on August 6, 2018, seeking writs of mandamus and prohibition, and alternative or preemptory writs.

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[1] "A court may dismiss a complaint sua sponte and without notice when the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint." *State ex rel. Brooks v. O'Malley*, 117 Ohio St.3d 385, 2008-Ohio-1118, 884 N.E.2d 42, _ 5.

[2] The estate of Robert Nichols was substituted as a party in the action on July 12, 2018.

Writ of Prohibition

{¶4} Relator seeks a writ of prohibition arguing that respondent judge does not have jurisdiction to hold an evidentiary hearing, scheduled for

August 14, 2018, to determine the merits of the Civ.R. 60(B) motion for relief from judgment pending before her.

> **{¶5}** In order for a writ of prohibition to issue, the relator must show that a judge is about to exercise judicial power that is unauthorized by law, and for which there is no other adequate remedy in the ordinary course of law. *State ex rel. Florence v. Zitter*, 106 Ohio St.3d 87, 2005-Ohio-3804, 831 N.E.2d 1003, _ 14. It has been held that, absent a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging the court's jurisdiction possesses an adequate remedy by appeal. *State ex rel. Enyart v. O'Neill* (1995), 71 Ohio St. 3d 655, 656, 646 N.E.2d 1110, 1112. However, if a lower court patently and unambiguously lacks jurisdiction over the cause, prohibition will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions. *State ex rel. Fraternal Order of Police, Ohio Labor Council, Inc. v. Franklin Cty. Court of Common Pleas* (1996), 76 Ohio St. 3d 287, 289, 667 N.E.2d 929, 931.

State ex rel. White v. Junkin, 80 Ohio St.3d 335, 336-337, 686 N.E.2d 267 (1997).

{¶6} It is not disputed that respondent judge has general subject matter jurisdiction over the action before her. *See Hunt v. Westlake City School Dist. Bd. of Edn.*, 114 Ohio App.3d 563, 568, 683 N.E.2d 803 (8th Dist.1996). Relator argues that there is a patent and unambiguous lack

of jurisdiction to hold a hearing on the motion for relief from judgment because respondent judge is ignoring a mandate issued by this court that established the law of the case.[3]

{¶7} Relator points to a portion of this court's opinion for support: "We find, however, that Nichols's grounds for relief from judgment appear on the face of the record, and therefore, the trial court should have granted Nichols's motion for relief from judgment as a matter of law." *Nichols I* at _ 22, citing *Kay v. Marc Glassman, Inc.*, 76 Ohio St.3d 18, 20, 665 N.E.2d 1102 (1996).

{¶8} Relator asserts that this court was clear in *Nichols I* that judgment be entered in his favor, and as a result, respondent judge has no authority or jurisdiction to conduct a hearing on the motion for relief from judgment. In the same opinion, however, this court recognized "'[i]f the movant files a motion for relief from judgment and it contains allegations of operative facts that would warrant relief under [Civ.R. 60(B)], the trial court should grant a hearing to take evidence and verify these facts before it rules on the motion.'" *Id.* at ¶ 21, quoting *ABL Wholesale Distribs. v. Quick Shop*, 8th Dist. Cuyahoga No. 97897, 2012-Ohio-3576, ¶ 12. The court went on to hold that, "[b]ased on the foregoing, we find that the trial court erred by denying Nichols's motion for relief from judgment without an evidentiary hearing." *Id.* at _ 30.

{¶9} Arguably, the above passages from *Nichols I* create an ambiguity in the decision. However, if this court's intention was to order respondent judge to enter judgment in relator's favor on remand, this court would have so ordered in the section of the opinion indicating the disposition. Further, were that this court's intention, the assignment of error addressing the

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[3] This doctrine "provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels." *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984), citing *Gohman v. St. Bernard*, 111 Ohio St. 726, 730, 146 N.E. 291 (1924).

respondent judge's failure to hold a hearing would have been moot, and this court would not have been required to address the issue.

{¶10} This leads to the conclusion that the respondent judge does not patently and unambiguously lack jurisdiction to conduct a hearing on relator's motion for relief from judgment. Therefore, whether relator has an adequate remedy at law becomes a salient issue. Here, there is an adequate remedy at law.

{¶11} 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, 1994-Ohio 510, 638 N.E.2d 74 (1994).

{¶12} If the respondent judge denies the motion for relief from judgment after a hearing, relator has a right to immediately appeal that determination.[4] An immediate appeal constitutes an adequate remedy at law. *State ex rel. Levin v. Sheffield Lake*, 70 Ohio St.3d 104, 109-110, 637 N.E.2d 319 (1994).

{¶13} Under these circumstances, it is clear on the face of the complaint that relator has an adequate remedy at law and cannot prevail in an action for prohibition. Therefore, we dismiss the claim for writ of prohibition.

Writ of Mandamus

[4] The Supreme Court of Ohio has also recognized that "[p]rohibition will not lie to prevent an anticipated erroneous judgment." *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 74, 701 N.E.2d 1002 (1998), citing *State ex rel. Heimann v. George*, 45 Ohio St.2d 231, 232, 344 N.E.2d 130 (1976).

{¶14} Relator also seeks a writ of mandamus directing respondent judge to enter judgment in his favor on the motion for relief from judgment.

{¶15} This court may issue a writ of mandamus only when we "'find that the relator has a clear legal right to the relief prayed for, that the respondent is under a clear legal duty to perform the requested act, and that relator has no plain and adequate remedy at law.'" *Hunt v. Westlake City School Dist. Bd. of Edn.*, 114 Ohio App.3d 563, 567, 683 N.E.2d 803 (8th Dist.1996), quoting *State ex rel. Westchester v. Bacon*, 61 Ohio St.2d 42, 399 N.E.2d 81 (1980), paragraph one of the syllabus. If an adequate remedy at law exists, a writ of mandamus will not issue. *Id.*, citing R.C. 2731.05; *State ex rel. Wolfe v. Close*, 50 Ohio St.3d 268, 553 N.E.2d 668 (1990).

{¶16} In this case, relator does not have a clear legal right to have judgment entered in his favor in the underlying action. As explained above, this court's opinion in *Nichols I* is arguably ambiguous, and does not inure itself to a demonstration of a clear legal right for the requested relief. Further, relator has an adequate remedy at law as addressed above. If respondent judge denies his motion for relief from judgment, relator has an adequate remedy by way of appeal. If the court grants the motion, this action becomes moot because relator will have received the relief he has requested from this court. *State ex rel. Jerninghan v. Court of Common Pleas*, 74 Ohio St.3d 278, 658 N.E.2d 723 (1996).

{¶17} For those reasons, the claim for writ of mandamus is dismissed.

Conclusion

{¶18} The arguable ambiguity in *Nichols I* does not mean that respondent judge patently and unambiguously lacks jurisdiction to conduct a hearing on the motion for relief from judgment following remand from this court. This also means respondent judge is not about to engage in an

unauthorized exercise of judicial authority. In both instances, an adequate remedy at law exists by way of an immediate appeal from respondent judge's decision, should an appeal be necessary. Accordingly, we sua sponte dismiss relator's complaint. Relator to pay costs. 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).

{¶19} Complaint dismissed.

PATRICIA ANN BLACKMON, JUDGE

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