

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

V.R.T., :
Relator, :
v. : No. 108116
JUDGE LESLIE CELEBREZZE, ET AL., :
Respondent. :

JOURNAL ENTRY AND OPINION

JUDGMENT: COMPLAINT DISMISSED
DATED: June 5, 2019

Writs of Prohibition and Mandamus
Motion No. 525264
Order No. 528098

Appearances:

V.R.T., *pro se*.

Michael C. O'Malley, Prosecuting Attorney, and James E. Moss, Assistant Prosecuting Attorney, *for respondent*.

SEAN C. GALLAGHER, J.:

{¶ 1} This mandamus and prohibition action arises out of a divorce case, *P.B. (mother) v. V.R.T. (father)*, Cuyahoga D.R. No. DR-07-317518. The parents married in 1996 and had two children. The older child was born in January 2000, and is now emancipated. The younger child was born in November 2005. In 2007,

the mother commenced the underlying divorce case, and the trial court granted the divorce in early 2009. In 2011, the mother and the two children moved to Indiana, and the father moved to Pennsylvania in 2012.

{¶ 2} In March 2018, the mother filed the subject motion to modify visitation in the underlying case. After some delays regarding service, the father filed a declaratory judgment/motion to dismiss for lack of jurisdiction. When the trial court did not rule on the filing and scheduled final arguments on the visitation motion, the father on January 14, 2019, commenced this writ action against the respondents, Judge Leslie A. Celebrezze and Magistrate Patrick Kelly. The father seeks to compel the respondents in the underlying case, to rule on the declaratory judgment/motion to dismiss for lack of jurisdiction or to prohibit the respondents from further adjudicating the case. He argues that pursuant to R.C. 3127.16 the respondents do not have jurisdiction, because all the parties have moved out of Ohio.

{¶ 3} On January 17, 2019, this court issued an alternative writ of mandamus and prohibition that by February 7, 2019, the respondents shall rule on the father's claim that it does not have jurisdiction or show cause why it need not rule, that it either dismiss the case for lack of jurisdiction by that date or show cause why it does have jurisdiction, and that it shall not rule on the underlying motion to modify visitation until further order of this court. On February 4, 2019, the respondents filed a brief responding to the alternative writ. Attached to this filing is a copy of the court's journal entry ruling that the father's declaratory judgment is actually a motion to dismiss for lack of subject matter jurisdiction. The respondents

denied the motion and held that they have jurisdiction over the underlying case. The respondents also moved to dismiss the writ action. The father filed his brief in opposition to the motion to dismiss on February 25, 2019. This court allowed the mother to intervene when she filed an answer and supporting brief. On March 21, 2019, the father filed his response to the mother's brief. For the following reasons, this court grants the respondents' motion to dismiss and dismisses the application for writs of mandamus and prohibition.

{¶ 4} The father's claim for mandamus is moot because the respondents have ruled on his declaratory judgment/motion to dismiss for lack of jurisdiction. The trial court's journal entry fully answers the father's argument and concludes that it still has jurisdiction over the case. The trial court's action also moots the issue of whether the "declaratory judgment" was an authentic counterclaim or in substance a motion to dismiss.

{¶ 5} The principles governing prohibition are well established. Its requisites are (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). Prohibition will not lie unless it clearly appears that the court has no jurisdiction of the cause that it is attempting to adjudicate or the court is about to exceed its jurisdiction. *State ex rel. Ellis v. McCabe*, 138 Ohio St. 417, 35 N.E.2d 571 (1941), paragraph three of the syllabus. "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). Furthermore, it should be used with great caution and not issue in a doubtful case. *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas*, 137 Ohio St. 273, 28 N.E.2d 641 (1940). Nevertheless, when a court is patently and unambiguously without jurisdiction to act whatsoever, the availability or adequacy of a remedy is immaterial to the issuance of a writ of prohibition. *State ex rel. Tilford v. Crush*, 39 Ohio St.3d 174, 529 N.E.2d 1245 (1988); and *State ex rel. Csank v. Jaffe*, 107 Ohio App.3d 387, 668 N.E.2d 996 (8th Dist.1995). However, absent such a patent and unambiguous lack of jurisdiction, a court having general jurisdiction of the subject matter of an action has authority to determine its own jurisdiction. A party challenging the court’s jurisdiction has an adequate remedy at law via an appeal from the court’s holding that it has jurisdiction. *State ex rel. Rootstown Local School Dist. Bd. of Edn. v. Portage Cty. Court of Common Pleas*, 78 Ohio St.3d 489, 678 N.E.2d 1365 (1997). Moreover, this court has discretion in issuing the writ of prohibition. *State ex rel. Gilligan v. Hoddinott*, 36 Ohio St.2d 127, 304 N.E.2d 382 (1973).

{¶ 6} R.C. 3127.16 provides in pertinent part as follows: “a court of this state that has made a child custody determination * * * has exclusive, continuing jurisdiction over the determination until the court or a court of another state determines that the child, the child’s parents, * * * do not presently reside in this state.” The father argues that the statute divests an Ohio court of jurisdiction when

the court or a court of another state determines that the child and the child's parents do not reside in Ohio. Thus, because in this case the parents and the child no longer reside in Ohio and because the respondents have recognized this fact, the respondents no longer have jurisdiction to hear the subject motion and prohibition will issue.

{¶ 7} However, the courts have not so interpreted R.C. 3127.16. In *Mulatu v. Girsha*, 12th Dist. Clermont No. CA2011-07-051, 2011-Ohio-6226, Ethiopian parents married in Sweden and moved to the United States, initially to Indiana and then to Ohio. The father obtained a divorce in Sweden and also obtained "sole guardianship" of the couple's three children. The family then visited relatives in Ethiopia. Because the father took the children's passports, the children were "stranded" in Ethiopia. After registering the Swedish divorce in Ohio, the father sought in an Ohio court a civil protection order against the mother, and the mother, who was then living in Maryland, sought modification of the Swedish order, custody of the children, and the return of their passports. The trial court granted temporary custody to the mother and ordered the father to return the children's passports. When the father refused to produce the passports, the trial court found him in contempt. The father then moved to dismiss the proceedings for lack of jurisdiction. The trial court granted that motion because there was insufficient evidence that the father still resided in Ohio. On appeal, the Twelfth District Court of Appeals ruled that the trial court did have jurisdiction under R.C. 3127.16. The court reasoned that there must be a forum to determine the welfare of the children. Once Ohio has

obtained jurisdiction, it retains continuing jurisdiction, even if the parties no longer reside in Ohio, as long as no other court has asserted jurisdiction over the parties. “R.C. 3127.16 simply sets forth the terms under which Ohio no longer has exclusive jurisdiction. * * * However, the statutory principle does not strip the Ohio trial court from continuing jurisdiction.” *Id.* at ¶ 45.

{¶ 8} Similarly, in *Johnson v. Kelly*, 10th Dist. Franklin No. 14AP-1037, 2015-Ohio-2666, the father established paternity and a shared parenting plan in Ohio, when all the parties lived in Ohio. The mother subsequently moved to Michigan and the father moved out of Ohio on various Army assignments. When the mother obtained legal custody of their child in the Ohio court, the father appealed on the grounds that pursuant to R.C. 3127.16, Ohio lacked jurisdiction because none of the parties resided in Ohio. The court of appeals rejected this proposition. If none of the parties reside in Ohio, and if “another court has not indicated an intent to take jurisdiction, R.C. 3127.16 does not completely deprive an Ohio court of jurisdiction but merely deprives it of ‘exclusive’ jurisdiction.” *Id.* at ¶ 16. Therefore, the court of appeals upheld the decision of the trial court.

{¶ 9} In *Robinette v. Bryant*, 4th Dist. Lawrence No. 12CA20, 2013-Ohio-2889, the mother argued that because none of the parties remained in Ohio, R.C. 3127.16 deprived the Ohio court of jurisdiction to consider custody. The Fourth District ruled: “R.C. 3127.16 does not totally divest a trial court of jurisdiction if the parties move out of state; rather the court only loses its claim to exclusive

jurisdiction. * * * the trial court retained its continuing jurisdiction after [the parties] left Ohio.” *Id.* at ¶ 1.

{¶ 10} Applying these principles to the present case, although it is undisputed that the parents and the child have not lived in Ohio for years, it is also undisputed that no other court has exerted jurisdiction. Thus, under the statute, the respondents retain jurisdiction to decide the subject motion.

{¶ 11} The court also notes that in *Johnson, Mulatu, and Robinette*, the issue of jurisdiction was determined on appeal after the trial court had reached its decision. Thus, appeal is an adequate remedy at law also precluding a writ of prohibition.

{¶ 12} Accordingly, the court grants the respondents’ motion to dismiss and dismisses the application for writs of prohibition and mandamus and dissolves the alternative writ. The respondents may adjudicate the subject motion. 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).

{¶ 13} Complaint dismissed.

SEAN C. GALLAGHER, JUDGE

MARY J. BOYLE, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR