

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, EX REL. CAMPUS  
HEALTH SERVICES, INC., ET AL.,

:

Relators,

:

No. 110003

v.

:

HON. JUDGE JOHN J. RUSSO,

:

Respondent.

:

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JOURNAL ENTRY AND OPINION

**JUDGMENT:** COMPLAINT DISMISSED

**DATED:** November 20, 2020

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Writ of Prohibition  
Motion No. 541858  
Order No. 542280

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***Appearances:***

Bricker & Eckler L.L.P., Matthew D. Gurbach, and Bryan  
M. Smeenck, *for relators.*

Michael C. O'Malley, Cuyahoga County Prosecuting  
Attorney, and Matthew D. Greenwell, Assistant  
Prosecuting Attorney, *for respondent.*

EILEEN T. GALLAGHER, A.J.:

{¶ 1} Campus Health Services, Inc., Euclid Hill Health Investors, Inc. d.b.a.

Hillside Plaza, Euclid Hill Real Estate Company, C.A.S. Health Investors, Inc. d.b.a.

Cedarwood Plaza, C.A.S. Real Estate Company, Oregon Health Investors Company dba Orchard Villa, Oregon Real Estate Company, and Legacy Place Twinsburg, all collectively referred to as “relators,” have filed a joint complaint for a writ of prohibition. The relators request that this court “issue a writ of prohibition [against the respondent, Judge John J. Russo], declaring that his order to disclose Relators’ confidential trade secrets is void or barring [Judge Russo] from enforcing his October 1, 2020, order to disclose Relators’ financial trade secrets contained in their tax returns.” Judge Russo has filed a Civ.R. 12(B)(6) motion to dismiss, which is granted for the following reasons.

### **I. Facts**

{¶ 2} The following facts are gleaned from the complaint for a writ of prohibition, Judge Russo’s Civ.R. 12(B)(6) motion to dismiss, and the relator’s brief in opposition to the motion to dismiss. On September 24, 2017, a complaint for wrongful death and survivorship was filed in *Kathleen A. Andrews, Executrix of the Estate of Kenneth A. Andrews v. Middleburg Legacy Place, LLC d.b.a. Parkside Villa, et al.*, Cuyahoga C.P. No. CV-17-885918. On September 26, 2019, Judge Russo granted leave to file an amended complaint to include claims for spoliation of evidence and punitive damages. As part of the discovery process, the defendants were served with “Plaintiff’s Fifth Set of Requests for Production of Documents.” The request for documents required defendants to produce their federal, state, and local tax returns from 2016 through 2020. On May 1, 2020, the defendants filed a motion for protective order that provided Judge Russo issue “an order pursuant to

Rule 45(E) of the Rules of Superintendence for the Courts of Ohio, that the information sought by Plaintiff be filed with the Court under seal and maintained by the Court until it determines that a basis for punitive damages exists.” The defendants argued that “the information and documents sought are sensitive, confidential business records – the dissemination of which would cause irreparable harm to defendants.” The defendants also requested that:

Should the Court reject this argument the Defendant is still entitled to have the Court protect its interests by entering a Protective Order pursuant to Rule 45(E) of the Rules of Superintendence for the Courts of Ohio to limit distribution of this material to the general public. A proposed Protective Order is attached for review and signature. Defendants’ request that they be allowed to file any financial information produced under seal with the Court and that the Court retain the information until such time as justice requires its release. In the alternative Defendants request the Court enter the Proposed Protective Order which binds the Plaintiff and her contractors/consultants/experts to obey the Order under threat of sanctions.

**{¶ 3}** On July 28, 2020, Judge Russo granted the defendants’ motion for protective order in part and adopted the proposed protective order without alteration:

Video teleconferencing hearing held on 07/28/2020. Counsel for the respective parties participated. A court reporter was present in the courtroom.

The parties provided the court with their positions regarding defendants’ 05/01/2020 motion for protective order and plaintiff’s 06/11/2020 motion to compel. Having reviewed the parties’ briefing and arguments, the court hereby grants in part and denies in part both motions regarding the discovery at issue as follows:

Fifth set of requests for production of documents.

The court orders defendants to produce the requested documents as relevant and non-excessive for the years 2016 and 2019 for the following requests: 1 (federal tax returns only), 2, 3, 4, 8, and 9. The court orders that said documents be produced within 30 days and subject to the court's protective order which shall appear on the docket via a separate entry.

The court finds requests 5, 6, 7, and 10 to be duplicative, excessive, and/or already requested.

Sixth set of interrogatories:

The court orders defendants to provide the requested information as relevant and non-excessive for the years 2016 and 2019 for the following interrogatories: 1, 2, 3, and 4. The court orders that said interrogatories be answered within 30 days and subject to the court's protective order which shall appear on the docket via a separate entry.

The court finds interrogatory 5 to be duplicative, excessive, and/or already requested.

**{¶ 4}** On October 1, 2020, Judge Russo ordered the defendants to produce their federal tax returns for the years 2016 and 2019, subject to the protective order issued on July 28, 2020. On October 6, 2020, the relators filed their complaint for a writ of prohibition in an effort to prevent the implementation of the discovery order that required the defendants in the underlying civil action to produce federal tax returns for 2016 and 2019. On October 7, 2020, this court granted the relators' application for an alternative writ and stayed Judge Russo's discovery order relating to the federal tax returns of 2016 and 2019. On October 19, 2020, Judge Russo filed a Civ.R. 12(B)(6) motion to dismiss. On October 26, 2020, the relators filed a joint brief in opposition to Judge Russo's motion to dismiss.

## II. Legal Standards for Prohibition

{¶ 5} In order for this court to issue a writ of prohibition, the relators in this action must demonstrate that: (1) Judge Russo is about to exercise judicial power; (2) the exercise of such power by Judge Russo is unauthorized by law; and (3) the relators possess no other adequate remedy in the ordinary course of the law. *State ex rel. Largent v. Fisher*, 43 Ohio St.3d 160, 540 N.E.2d 239 (1989); *Collegiate Communities, LLC v. Kilbane*, 8th Dist. Cuyahoga No. 108903, 2020-Ohio-926. Prohibition does not lie unless it is clear that a court possesses no jurisdiction over 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); *State ex rel. Thomas v. McGinty*, 8th Dist. Cuyahoga No. 108633, 2019-Ohio-5129.

{¶ 6} A writ of prohibition may not be employed to prevent an erroneous judgment, serve the purpose of an appeal, or correct mistakes of a lower court in deciding questions within its jurisdiction. *State ex rel. Sparto v. Juvenile Court of Darke Cty.*, 153 Ohio St. 64, 90 N.E.2d 598 (1950); *A.S. v. Gold*, 8th Dist. Cuyahoga No. 109922, 2020-Ohio-4309. Prohibition should be employed with great caution and will not issue in doubtful cases. *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas*, 137 Ohio St. 273, 28 N.E.2d 641 (1940); *State ex rel. Lang v. Turner*, 8th Dist. Cuyahoga No. 108214, 2019-Ohio-3520. However, when a court is patently and unambiguously without jurisdiction to act whatsoever, a writ of prohibition must be issued to prevent the exercise of unauthorized jurisdiction. *State ex rel. Tilford v. Crush*, 39 Ohio St.3d 174, 529 N.E.2d 1245 (1988); *State ex*

*rel. Csank v. Jaffee*, 107 Ohio App.3d 387, 668 N.E.2d 996 (8th Dist.1995). Nevertheless, absent a patent and unambiguous lack of jurisdiction, a court possessing general subject matter of an action possesses the necessary authority to determine its own jurisdiction. A party challenging the court’s jurisdiction has an adequate remedy at law through an appeal from the court’s holding that it possesses jurisdiction. *State ex rel. Cleveland v. Russo*, 156 Ohio St.3d 449, 2019-Ohio-1595, 129 N.E.3d 384; *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 (1967). It must also be noted that this court has discretion in issuing a writ of prohibition. *State ex rel. Gilligan v. Hoddinott*, 36 Ohio St.2d 127, 304 N.E.2d 382 (1973); *V.R.T. v. Celebrezze*, 8th Dist. Cuyahoga No. 108116, 2019-Ohio-2339.

### **III. Analysis**

#### **A. Jurisdiction**

{¶ 7} Herein, Judge Russo clearly possesses general subject-matter jurisdiction to preside over *Kathleen A. Andrews, Executrix of the Estate of Kenneth A. Andrew v. Middleburg Legacy Place, LLC d.b.a. Parkside Villa, et al.*, Cuyahoga C.P. No. CV-17-885918. Pursuant to the Ohio Constitution, Article IV, Section 4(B), a court of common pleas is a court of general jurisdiction, with subject-matter jurisdiction that extends to all matters of law and in equity that are not denied it. *Ohio High School Athletic Assn. v. Ruehlman*, 157 Ohio St.3d 296, 2019-Ohio-2845, 136 N.E.3d 436. The Ohio Supreme Court has noted the confusion often surrounding the term “jurisdiction.” The term “jurisdiction” can be used with regard

to the concepts of jurisdiction over the subject matter, jurisdiction over the person, and jurisdiction over a particular case. *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040. Prohibition is solely concerned with a court's subject-matter jurisdiction, that is "the power of a court to entertain and adjudicate a particular class of cases." *Id.* at ¶ 19, citing *Morrison v. Steiner*, 32 Ohio St.2d 86, 290 N.E.2d 841 (1972). A court's subject-matter jurisdiction is determined without regard to the rights of any individual party. *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 701 N.E.2d 1002 (1998); *Handy v. Ins. Co.*, 37 Ohio St. 366, 1881 Ohio LEXIS 187 (1881).

{¶ 8} Judge Russo also possesses broad discretion over discovery matters. *State ex rel. Citizens for Open, Responsive & Accountable Govt. v. Register*, 116 Ohio St.3d 88, 2007-Ohio-5542, 876 N.E.2d 913. The power of Judge Russo to control discovery includes the inherent authority to direct an in camera inspection of alleged privileged materials and to impose sanctions for failure to comply with discovery orders, so a writ of prohibition will not issue to challenge these orders. *State ex rel. Grandview Hosp. & Med. Ctr. v. Gorman*, 51 Ohio St.3d 94, 554 N.E.2d 1297 (1990). *See also Nakoff v. Fairview Gen. Hosp.*, 75 Ohio St.3d 254, 662 N.E.2d 1 (1996).

{¶ 9} It must also be noted that the relators' argument of a lack of personal jurisdiction fails on its face. The order of Judge Russo, to provide tax records from 2016 and 2019, has been directed to the defendants in the underlying civil action and does not direct the relators to produce any tax records. Further, it is apparent

that the relators are all organized under the laws of the state of Ohio and conduct business within the territorial jurisdiction of the Cuyahoga County Court of Common Pleas, thus establishing minimum contacts subjecting them to personal jurisdiction. *State ex rel. Capital One Bank (USA) N.A. v. Karner*, 8th Dist. Cuyahoga No. 96739, 2011-Ohio-6439. *See also State ex rel. Suburban Constr. Co. v. Skok*, 85 Ohio St.3d 645, 710 N.E.2d 710 (1999), citing *Clark v. Connor*, 82 Ohio St.3d 309, 695 N.E.2d 751 (1998). The lack of personal jurisdiction must be premised on the lack of minimum contacts; minimum contacts exist herein based upon the facts before this court. *State ex rel. Connor v. McGough*, 46 Ohio St.3d 188, 546 N.E.2d 407 (1989).

## **B. Adequate Remedies in the Ordinary Course of the Law**

{¶ 10} This court will not issue a writ of prohibition because the relators possess numerous adequate remedies in the ordinary course of the law. The tax records subject to discovery can be redacted to eliminate any reference to the non-party business records. *McDougald v. Greene*, Slip Opinion No. 2020-Ohio-4268; *Entech Ltd., v. Geauga Cty. Court of Common Pleas*, 11th Dist. Geauga No. 2016-G-0092, 2017-Ohio-503. The relators are permitted, under Civ.R. 26(C)(7), to file a motion for protective order in an attempt to protect purported trade secrets. *Splater v. Thermal Ease Hydronic Sys., Inc.*, 169 Ohio App.3d 514, 2006-Ohio-5452, 863 N.E.2d 1060 (8th Dist.). In addition, the relators are permitted to file a motion to intervene in the trial court action and then file a motion to quash a subpoena duces tecum issued for the discovery of the tax record. Civ.R. 24; Civ.R. 45(C)(3)(b); *State*

*v. Bennett*, 3d Dist. Wyandot No. 16-19-03, 2019-Ohio-4937; *City of Parma v. Schoonover*, 8th Dist. Cuyahoga No. 100152, 2014-Ohio-400. It must also be noted that although discovery orders are generally interlocutory, denials of motions to quash subpoenas served on nonparties are final appealable orders. *Munro v. Dargai*, 8th Dist. Cuyahoga No. 54622, 1988 Ohio App. LEXIS 1144, 1988 WL 36594 (Mar. 31, 1988), citing *Foor v. Huntington Natl. Bank*, 27 Ohio App.3d 76, 499 N.E.2d 1297 (10th Dist.1986).

{¶ 11} Finally, the refusal of the relators or the defendants in the underlying civil action to provide the requested tax records could subject them to contempt proceedings and ultimately a finding of contempt. The relators and the defendants in the underling civil action possess an adequate remedy in the ordinary course of the law through an immediate appeal by challenging any contempt order based upon the claim that Judge Russo’s discovery order is improper. “[A]ppealing a contempt order is an adequate remedy at law which will result in denial of the writ.” *State ex rel. Wellington v. Kobly*, 112 Ohio St.3d 195, 2006-Ohio-6571, 858 N.E.2d 798, ¶ 29 quoting *State ex rel. Mancino v. Campbell*, 66 Ohio St.3d 217, 220, 611 N.E.2d 319 (1993). *See also State ex rel. Fifth Third Mtge. Co. v. Russo*, 129 Ohio St.3d 250, 2011-Ohio-3177, 951 N.E.2d 414; *State ex rel. Mason v. Burnside*, 117 Ohio St.3d 1, 2007-Ohio-6754, 881 N.E.2d 224; *State ex rel. Prentice v. Ramsey*, 8th Dist. Cuyahoga No. 89061, 2007-Ohio-533.

### **C. Attempt to Argue an Appellate Question Though Prohibition**

{¶ 12} As stated previously, a writ of prohibition may not be employed to prevent an erroneous judgment, serve the purpose of an appeal, or correct mistakes of a lower court in deciding questions within its jurisdiction. *State ex rel. Sparto v. Juvenile Court of Darke Cty., supra; A.S. v. Gold*, 8th Dist. Cuyahoga No. 109922, *supra*. Herein, the relators are attempting to argue that there exists no possible claim for the award of punitive damages in the underlying civil action, which prevents Judge Russo from allowing discovery on financial matters. The attempt to argue a lack of basis for punitive damages cannot be addressed through the complaint for prohibition. The argument of a lack of a basis for punitive damages must be raised on appeal. *State ex rel. Rivera v. Celebrezze*, 8th Dist. Cuyahoga No. 101684, 2014-Ohio-4940; *Woodard v. Colaluca*, 8th Dist. Cuyahoga No. 101327, 2014-Ohio-3824; *State ex rel. Goshay v. Lucas*, 8th Dist. Cuyahoga No. 95060, 2010-Ohio-4363.

### **IV. Conclusion**

{¶ 13} We find that the relators have failed to establish that they are entitled to a writ of prohibition because Judge Russo possesses general subject-matter jurisdiction over the underlying civil action and the relators possesses numerous remedies in the ordinary course of the law. Accordingly, we grant Judge Russo's Civ.R. 12(B)(6) motion to dismiss and dissolve the alternative writ for prohibition issued on October 7, 2020. Costs to the relators. 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).

{¶ 14} Complaint dismissed.

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EILEEN T. GALLAGHER, ADMINISTRATIVE JUDGE

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