

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

JAMES BROWN,	:	
	:	
Relator,	:	
	:	Nos. 110437 and 110459
v.	:	
	:	
YVETTE BROWN,	:	
	:	
Respondent.	:	

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JOURNAL ENTRY AND OPINION

**JUDGMENT: WRITS DENIED**

**DATED: May 14, 2021**

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Writs of Mandamus and Prohibition  
Order No. 546410

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***Appearances:***

James Brown, *pro se*.

Yvette Brown, *pro se*.

LISA B. FORBES, J.:

{¶ 1} April 20, 2021, the relators, James Brown (hereinafter “James”) and Simon Banks (“Banks”), commenced a mandamus and prohibition action against the named respondent, Yvette Brown (hereinafter “Yvette”), in *Brown v. Brown*, 8th Dist. Cuyahoga No. 110437, to stop the eviction of James and his business, JB

Original Sign Company, from 6257 Richmond Rd., Solon, Ohio.<sup>1</sup> On April 27, 2021, James and Banks filed an “Emergency petition for writ of prohibition and mandamus.” *Brown v. Brown*, 8th Dist. Cuyahoga No. 110459. In this complaint, they also identify the Bedford Municipal Court as a respondent, and seek to stop the eviction in *Brown v. Brown*, Bedford M.C. No. 21CVG01460. Sua sponte, for the following reasons, this court denies the petitions for writs of mandamus and prohibition.

{¶ 2} As gleaned from the filings in the instant and underlying cases, on November 13, 2020, Yvette filed for divorce from James. *Brown v. Brown*, Cuyahoga D.R. NO. DR-20-383346. The docket shows that James was served at the address of the subject property, 6257 Richmond Rd., Solon, Ohio. James never filed an appearance or any response to the complaint filed by Yvette. Accordingly, the domestic relations court scheduled the matter for a video Zoom hearing to take place on March 1, 2021, as an uncontested divorce. Though the hearing was scheduled to commence at 1:00 p.m., James apparently entered the hearing at 1:45. The judge nevertheless, allowed him to participate, but limited his participation.

{¶ 3} On March 3, 2021, the domestic relations court granted the divorce on the grounds of incompatibility and noted that James was in default of answer or other pleading. That court further found that Yvette owned the subject property outright; she was the sole title owner. Thus, that court awarded the subject property

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<sup>1</sup> Simon Banks alleges a 25 percent interest in the company and so invokes standing.

to her and ordered James to vacate the property by March 31, 2021. That court awarded James his personal property, including JB Original Sign Company, its equipment, and inventory.

{¶ 4} James filed numerous motions in the domestic relations court objecting to the proceedings alleging fraud and unfair treatment. He also promptly appealed to this court, *Brown v. Brown*, 8th Dist. Cuyahoga No. 110400. He tried to file a motion to stay in the court of appeals, but this court struck that motion due to procedural irregularities; he had captioned the motion “In Domestic Relations Court.”

{¶ 5} Yvette served James the three-day notice to leave and then commenced the eviction action in Bedford Municipal Court. In response, James and Banks filed these writ actions in which they allege that improprieties in the divorce action, such as limiting cross-examination and misrepresentation in addresses render the divorce void; that appealing the divorce deprived the court of jurisdiction to enforce the decree; that enforcing the property award would unconstitutionally deprive them of their property, i.e., the business assets; and that infirmities in the service of the three-day notice deprive the Bedford Municipal Court of jurisdiction.

{¶ 6} The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion,

even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987). Furthermore, mandamus is not a substitute for appeal. *State ex rel. Daggett v. Gessaman*, 34 Ohio St.2d 55, 295 N.E.2d 659 (1973); *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph three of the syllabus. Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Jerningham v. Gaughan*, 8th Dist. Cuyahoga No. 67787, 1994 Ohio App. LEXIS 6227 (Sept. 26, 1994). Moreover, mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977); and *State ex rel. Shafer v. Ohio Turnpike Comm.*, 159 Ohio St. 581, 113 N.E.2d 14 (1953).

{¶ 7} The principles governing prohibition are also 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). “A writ of prohibition will not be issued unless it clearly appears that the court \* \* \* whose action is sought to be prohibited has no jurisdiction of the cause which it is attempting to adjudicate, or 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).

{¶ 8} James and Banks argue that the transfer of jurisdiction principle divests the courts of jurisdiction to enforce the divorce decree. This argument is ill-founded. The transfer of jurisdiction principle is “that once an appeal is perfected, the trial court is divested of jurisdiction over matters that are inconsistent with the reviewing court's jurisdiction to reverse, modify or affirm the judgment.” *State ex rel. Bohlen v. Halliday*, Slip Opinion No. 2020-1245, 2021-Ohio-194, ¶ 25. The trial court retains jurisdiction to aid the appeal and all jurisdiction not inconsistent with

the appellate court's power to reverse, affirm, or modify the order from which the appeal is taken. The corollary to these principles is that the trial court retains jurisdiction to enforce its judgment, absent the trial court or the court of appeals granting a stay and setting bond, if appropriate. An appeal does not operate as an automatic stay. *State ex rel. Brown v. Lyndhurst Mun. Court*, 8th Dist. Cuyahoga No. 90779, 2008-Ohio-607 and *State ex rel. Brown v. Bedford Mun. Court*, 8th Dist. Cuyahoga No. 90730, 2008-Ohio-585. Absent a stay, the courts may enforce the divorce decree.

{¶ 9} Moreover, taking an appeal and moving for a stay pursuant to App.R. 7 first in the trial court, and then, if necessary, in the court of appeals is an adequate remedy at law that precludes the issuance of a writ. In *State ex rel. Moore v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 104404, 2016-Ohio-7227, the respondent court issued an order of foreclosure and a writ of possession directing the sheriff to deliver possession of the real property to the bank. The relators appealed and moved for a stay. While the stay motion was outstanding, the relators filed a prohibition action seeking to stop the eviction, which they claimed was without due process or a fair trial. They also sought an injunction. This court dismissed the writ, inter alia, because appeal and a motion for stay are adequate remedies at law precluding the issuance of a writ of prohibition. *State ex rel. Mason v. Burnside*, 117 Ohio St.3d 1, 2007-Ohio-6754, 881 N.E.2d 224. In *Novak v. McFaul*, 8th Dist. Cuyahoga No. 7732, 1999 Ohio App. LEXIS 5218 (Oct. 26, 1999), this court denied a writ of prohibition to stop the sheriff from acting upon

an “Official Eviction Notice,” because appeal and a motion for stay are adequate remedies at law. This court in *Moore* also noted that an Ohio court of appeals lacks original jurisdiction to grant prohibitory injunctions.

{¶ 10} The Bedford Municipal Court is not patently and unambiguously without jurisdiction to entertain a forcible entry and detainer action to effect the divorce decree. In *State ex rel. Carro v. Weller*, 143 Ohio App.3d 402, 758 N.E.2d 225 (8th Dist.2001), the domestic relations court ruled that Sari Carro was not the common-law wife of Frank Carro. Sari appealed the decision. When Frank commenced a forcible entry and detainer action in a municipal court to evict her, Sari commenced a prohibition action in this court arguing that only the domestic relations court could enforce its order and that her appeal deprived the municipal court of jurisdiction. This court rejected that argument and denied the writ of prohibition. The municipal court had jurisdiction to adjudicate the forcible entry and detainer action once the domestic relations court issued its order. Furthermore, the relator would have adequate remedies at law through an appeal of the eviction and a motion for stay.

{¶ 11} The Tenth District Court of Appeals reached the same conclusion in *Talbott v. Talbott*, 10th Dist. Franklin Nos. 86AP-248, 86AP-342, and 86AP-370, 1986 Ohio App. LEXIS 9095 (Nov. 13, 1986). In that case, the domestic relations court awarded the marital home to the husband, who had bought it with his brother before the marriage. The husband then brought a forcible entry and detainer action in Franklin County Municipal Court to seek restitution of the house. The municipal

court granted the action, but stayed its execution pending the appeal of the divorce. In a combined appeal of the divorce and the forcible entry and detainer action, the court of appeals rejected the wife's argument that the municipal court was without jurisdiction to adjudicate the forcible entry and detainer action. Any irregularities relating to the commencement or prosecution of the forcible entry and detainer action should first be litigated in the trial court and then, if necessary, on appeal.

{¶ 12} Finally, Yvette is not subject to mandamus and prohibition actions. Mandamus will not lie to enforce a private right against a private person. *State ex rel. Pressley*, 11 Ohio St.2d 141, 228 N.E.2d 631, at paragraph eight of the syllabus; and *Shine v. Saffold*, 8th Dist. Cuyahoga No. 101551, 2014-Ohio-4220. Yvette is not exercising judicial power, the first requisite for prohibition. She is not hearing and determining a controversy in a proceeding resembling a trial. *State ex rel. Miller v. Warren Cty. Bd. of Elections*, 130 Ohio St.3d 24, 2011-Ohio-4623, 955 N.E.2d 379, ¶ 13.

{¶ 13} Accordingly, this court denies the writs of mandamus and prohibition in both cases. James and Banks to pay costs. The court instructs the clerk to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).



{¶ 14} Writs denied.

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LISA B. FORBES, JUDGE

ANITA LASTER MAYS, P.J., and  
EILEEN T. GALLAGHER, J., CONCUR