

[Cite as *Gatto v. Falvey*, 2009-Ohio-4996.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DAVID R. GATTO

Petitioner

-vs-

MARY A. FALVEY

Respondent

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. William B. Hoffman, J.

Hon. Patricia A. Delaney, J.

Case No. 2009 CA 0184

OPINION

CHARACTER OF PROCEEDING:

Writ of Prohibition

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

September 21, 2009

APPEARANCES:

For Petitioner

For Respondent

DAVID R. GATTO, PRO SE
2424 Indiana Way N.E.
Canton, Ohio 44705

JOSEPH MARTUCCIO
CANTON LAW DEPARTMENT

By: BRIAN J. WALTER
Assistant City Prosecutor
218 Cleveland Ave., S.W.
P.O. Box 24218
Canton, Ohio 44701

Hoffman, J.

{¶1} This matter came before the Court upon a “Petetin(sic) for Writ of Prohibition” filed by David Gatto against Judge Mary Falvey of the Canton Municipal Court. Respondent Falvey has filed a Motion to Dismiss pursuant to Civ.R. 12(B)(6) urging dismissal for failure to state a claim upon which relief may be granted. Petitioner has not filed a response to the motion to dismiss.

{¶2} Once the act sought to be prohibited has been completed, a writ of prohibition will not issue, “A writ of prohibition may not issue, however, when the action, order, or judgment that the relators seek to have prohibited has been fully consummated and the issues have become moot.” *Denton v. Bedinghaus* 2002 WL 1393563, 5 (Ohio App. 1 Dist.). Respondent advises a trial has been held and Petitioner has been sentenced concluding the case before Respondent. Based upon the foregoing, we find the instant petition to be moot because the act sought to be prohibited has already been completed.

{¶3} Even had we considered the merits of the Petition, we would decline to issue the requested writ. In order for a writ of prohibition to issue, petitioner must prove that: (1) the lower court is about to exercise judicial authority; (2) the exercise of authority is not authorized by law; and, (3) the petitioner has no other adequate remedy in the ordinary course of law if a writ of prohibition is denied. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 178, 631 N .E.2d 119. A writ of prohibition, regarding the unauthorized exercise of judicial power, will only be granted where the judicial officer's lack of subject-matter jurisdiction is patent and unambiguous. *Ohio Dept. of Adm. Serv., Office of Collective Bargaining v. State Emp. Relations Bd.* (1990),

54 Ohio St.3d 48, 562 N.E.2d 125. *State ex rel. Daniels v. Harris*, 2008 WL 5197131, 1 (Ohio App. 5 Dist.). Prohibition will not issue where there is an adequate remedy at law. *Id.*

{¶14} R.C.1901.02 confers jurisdiction upon the Canton Municipal Court relative to misdemeanors occurring within its territorial boundaries. The misdemeanors charged in this case occurred in Canton Township, Canton, Ohio which is within the territorial boundaries of the Canton Municipal Court.

{¶15} The Supreme Court has stated, “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.” *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 1997-Ohio-340, 686 N.E.2d 267.

{¶16} Petitioner was charged with a misdemeanor within the jurisdiction of the Court in which the Complaint was filed, therefore, Petitioner has failed to show Respondent patently and unambiguously lacked jurisdiction. For this reason, Petitioner has or had an adequate remedy at law by way of appeal, therefore, the requested writ would not issue.

{¶17} MOTION TO DISMISS GRANTED.

{¶18} COMPLAINT DISMISSED.

{19} COSTS TO PETITIONER.

By: Hoffman, J.

Farmer, P.J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DAVID R. GATTO

Petitioner

-vs-

MARY A. FALVEY

Respondent

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JUDGMENT ENTRY

Case No. 2009 CA 0184

For the reasons stated in our accompanying Memorandum-Opinion, the
Complaint for Writ of Mandamus is dismissed.

MOTION TO DISMISS GRANTED.

COMPLAINT DISMISSED.

COSTS TO PETITIONER.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY