[Cite as *State ex rel. Alff v. Harris,* 2015-Ohio-2643.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX. REL., V. CAROLE ALFF Relator -vs- PATRICK N. HARRIS, JUDGE Respondent	JUDGES: Hon. William B. Hoffman, P.J. Hon. Sheila G. Farmer, J. Hon. Patrick A. Delaney, J. Case No. 15-CA-11 O P I N I O N

CHARACTER OF PROCEEDING:	Petition for Writ of Prohibition and/or Mandamus
JUDGMENT:	Writ Issued
DATE OF JUDGMENT ENTRY:	June 29, 2015

APPEARANCES:

For Relator	For Respondent
C. BERNARD BRUSH 5530 Columbia Rd S.W. Pataskala, Ohio 43062	No Appearance

Hoffman, P.J.

{¶1} Relator, V. Carole Alff, has filed a Petition for Writ of Mandamus and/or Writ of Prohibition against Respondent, Judge Patrick Harris of the Fairfield Municipal Court. Relator seeks a writ prohibiting Respondent from presiding over a trial currently set before Respondent and vacating all orders issued by Respondent after Relator filed a Civ.R. 41(A) dismissal.

{¶2} The facts in this case are undisputed. Relator Alff is the plaintiff in Fairfield Municipal Court case number 13CVG01683. The complaint in that case was filed on July 16, 2013. The defendant in that case filed an answer pro se on August 14, 2013. Several months later on February 26, 2014, the defendant filed a "Motion for Leave to File Amended Answer and File Counterclaim Instanter." While the motion for leave was pending, Alff file a Civil Rule 41(A) notice of voluntary dismissal on March 5, 2014. Thereafter, on March 12, 2014, the trial court granted defendant's motion for leave to file an amended answer and counterclaim. The parties subsequently filed various pleadings attempting to determine whether the trial court had jurisdiction to continue the cause below after the notice of dismissal had been filed. The trial court found the voluntary dismissal to be invalid because Alff had been served with a copy of the defendant's proposed counterclaim.

{¶3} For a writ of mandamus to issue, the relator must have a clear legal right to the relief prayed for, the respondent must be under a clear legal duty to perform the requested act, and relator must have no plain and adequate remedy in the ordinary course of law. *State, ex rel. Berger, v. McMonagle* (1983), 6 Ohio St.3d 28, 451 N.E.2d 225.

{¶4} 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.).

{¶5} "If a lower court patently and unambiguously lacks jurisdiction to proceed in a cause, prohibition and mandamus will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions." *State ex rel. Mayer v. Henson,* 97 Ohio St.3d 276, 2002-Ohio-6323, 779 N.E.2d 223, ¶ 12; *State ex rel. Powell v. Markus,* 115 Ohio St.3d 219, 2007-Ohio-4793, 874 N.E.2d 775, ¶ 7. "[I]n general, when a trial court unconditionally dismisses a case or a case has been voluntarily dismissed under Civ.R. 41(A)(1), the trial court patently and unambiguously lacks jurisdiction to proceed, and a writ * * * will issue to prevent the exercise of jurisdiction." *State ex rel. Hummel v. Sadler,* 96 Ohio St.3d 84, 2002-Ohio-3605, 771 N.E.2d 853, ¶ 22; *State ex rel. Benbow v. Runyan,* 99 Ohio St.3d 410, 2003-Ohio-4127, 792 N.E.2d 1124, ¶ 6.

{¶6} There are exceptions to this general rule, most notably that despite a voluntary dismissal, a trial court may consider collateral issues not related to the merits

of the action, e.g., sanctions under Fed.R.Civ.P. 11, R.C. 2323.51, and *253 Civ.R. 45(E), and criminal contempt. See *Hummel* at ¶ 23–24, and cases cited therein." *State ex rel. Fifth Third Mtge. Co. v. Russo*, 129 Ohio St.3d 250, 252-53, 2011-Ohio-3177, 951 N.E.2d 414, 417-18, ¶¶ 12-13 (2011).

{¶7} "The plain import of Civ.R. 41(A)(1) is that once a plaintiff voluntarily dismisses all claims against a defendant, the court is divested of jurisdiction over those claims. "It is axiomatic that such dismissal deprives the trial court of jurisdiction over the matter dismissed. After its voluntary dismissal, an action is treated as if it had never been commenced." *Zimmie v. Zimmie* (1984), 11 Ohio St.3d 94, 95, 11 OBR 396, 464 N.E.2d 142. The notice of voluntary dismissal is self-executing and completely terminates the possibility of further action on the merits of the case upon its mere filing, without the necessity of court intervention. See, e.g., *Selker & Furber v. Brightman* (2000), 138 Ohio App.3d 710, 714, 742 N.E.2d 203; *Payton v. Rehberg* (1997), 119 Ohio App.3d 183, 191–192, 694 N.E.2d 1379." *Id.*

{¶8} Ohio Civ. R. 41 provides in relevant part,

{¶9} "(a) filing a notice of dismissal at any time before the commencement of trial unless a counterclaim which cannot remain pending for independent adjudication by the court has been served by that defendant."

{¶10} Civ.R. 41 prohibits a plaintiff from filing a voluntary dismissal if the plaintiff has been served with a counterclaim. In this case, the plaintiff below had not been served with a filed counterclaim. Rather, she had merely been served with a motion for leave to file a counterclaim. Even if a copy of the proposed counterclaim was included in the motion, no counterclaim was pending or had been filed prior to the filing of the

Civ.R. 41(A) dismissal. For this reason, the Civ.R. 41(A) dismissal was valid and divested the trial court of any jurisdiction to act following its filing. We have concluded the trial court is about to act and has acted without authority to do so. We further find there is no adequate remedy at law. "To be an adequate remedy at law, it must be complete, beneficial, and speedy." *State ex rel. Arnett v. Winemiller* (1997), 80 Ohio St.3d 255, 259, 685 N.E.2d 1219, 1222. Because of the time and resources required for a trial, an appeal following a trial would not be complete, speedy and beneficial. For these reasons, the requested writ of prohibition will issue.

{¶11} We also find the writ of mandamus is appropriate in this case. Respondent has a clear legal duty to close the case once the voluntary dismissal was filed. Relator has a right to have the dismissal recognized. As above, an appeal would not provide an adequate remedy at law.

{¶12} For these reasons, the writs of prohibition and mandamus are granted. The trial court shall vacate all orders subsequent to the filing of the voluntary dismissal.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur