

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio, ex rel. Spencer A. Adam

Court of Appeals No. L-15-1029

Relator

v.

Hon. C. Allen McConnell, Judge

DECISION AND JUDGMENT

Respondent

Decided: March 31, 2015

* * * * *

Spencer A. Adam, pro se.

Adam Loukx, Director of Law, and John T. Madigan, Senior Attorney,
for respondent.

* * * * *

OSOWIK, J.

Peremptory Writ of Prohibition

{¶ 1} This matter is before the court on a petition for a writ of prohibition filed by relator, Spencer A. Adam, against respondent, Toledo Municipal Court Judge C. Allen McConnell, on February 6, 2015. In his petition, relator asks this court to prevent

respondent from ordering relator to pay \$7,355.50 in damages in an eviction action. For the following reasons, we hereby grant the writ.

{¶ 2} In a prior decision involving relator and Good Knight Properties, LLC, this court upheld the judgment of the Toledo Municipal Court in an eviction proceeding (court case No. CVG-13-10318). *See Good Knight Properties, LLC v. Adam*, 6th Dist. Lucas No. L-13-1231, 2014-Ohio-4109. Subsequently, the trial court scheduled a hearing to be held on December 15, 2014, on the issue of damages in case No. CVG-13-10318. Appellant then filed a motion for a new trial, and Good Knight filed a motion to dismiss. The motion for a new trial was denied on October 21, 2014.

{¶ 3} On November 19, 2014, relator filed a notice of appeal from the denial of his motion for a new trial in this court, along with a motion to stay the damages hearing in the trial court, which the trial court denied on November 21, 2014 (“case No. L-14-1250”). On December 1, 2014, relator filed a motion for a stay of the damages hearing pending the outcome of his appeal. This court granted a stay of the damages hearing on December 12, 2014. However, in spite of our order staying the trial court’s proceedings, the damages hearing was held on December 15, 2014. On January 12, 2015, respondent issued a judgment entry in which he granted Good Knight’s motion to dismiss and ordered relator to pay Good Knight \$7,355.50 in damages. Relator filed an appeal in that case on February 5, 2015 (“case No. L-15-1028”). On February 13, 2015, the two cases were consolidated on appeal as case No. L-14-1250.

{¶ 4} In support of his petition, relator argues that, pursuant to our decision issued on December 12, 2014, respondent “unambiguously did not have jurisdiction to [hold the hearing on] December 15, 2014 or enter a judgment on the same.”

{¶ 5} In order to state a claim on which a writ of prohibition can be granted, relator must prove that: “(1) the court or officer against whom the writ is sought is about to exercise judicial or quasi-judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law.” *Eiselstein v. State of Ohio/City of Youngstown*, 7th Dist. Mahoning No. 12 MA 90, 2012-Ohio-4566, ¶ 5, citing *State ex rel. Triplett v. Ross*, 111 Ohio St.3d 231, 2006-Ohio-4705, 855 N.E.2d 1174, ¶ 18. While a relator is ordinarily required to meet all three of the above requirements, an exception applies in “situations where the court or officer patently and unambiguously lacks jurisdiction to act. In such a situation, the availability or adequacy of a remedy is immaterial to the issuance of a writ of prohibition.” *Id.* at ¶ 6, citing *State ex rel. Tilford v. Crush*, 39 Ohio St.3d 174, 176, 529 N.E.2d 1245 (1988).

“An order issued without jurisdiction is a nullity; it is void and without legal effect. *State v. Hall*, 4th Dist. No. 06CA17, 2007-Ohio-947, ¶ 11, citing *Patton v. Diemer*, 35 Ohio St.3d 68, 518 N.E.2d 941, paragraph three of the syllabus. * * * Moreover, Ohio courts possess inherent authority to vacate a void judgment. *Hall* at ¶ 11, citing *Patton* at

paragraph four of the syllabus.” *Fifth Third Mtge., Co. v. Rankin*, 4th Dist. Pickaway No. 11CA18, 2012-Ohio-2804, ¶ 15.

Generally, a trial court retains jurisdiction “over issues not inconsistent with that of the appellate court to review, affirm, modify or reverse the appealed judgment,” including collateral issues, like contempt, *provided that the appellate court has not issued a stay in a pending appeal. State ex rel. Special Prosecutors v. Judges*, 55 Ohio St.2d 94, 97, 378 N.E.2d 162 (1978). *See also Mason v. Mason*, 3d Dist. No. 14-98-36 (Mar. 31, 1999), citing *Cardone v. Cardone*, 9th Dist. No. 18349 (May 6, 1998) (trial court retained jurisdiction to conduct contempt proceedings during the pendency of an appeal). *Id.* at ¶ 14. (Emphasis added.)

{¶ 6} As set forth above, on December 12, 2014, this court issued an order granting a stay of the damages hearing that was scheduled for December 15, 2014. Accordingly, respondent did not have jurisdiction to order relator to pay damages based on the evidence presented at that hearing. Therefore, this court hereby issues a peremptory writ of prohibition preventing respondent from ordering relator to pay Good Knight \$7,355.50 in damages pending the outcome of the appeal in consolidated case No. L-14-1250.

{¶ 7} Petition granted. Costs assessed to respondent.

{¶ 8} To the clerk: Manner of service.

{¶ 9} The clerk of court, whom the court hereby specially authorizes to perfect service in this case, shall immediately serve, upon the respondent by personal service, a copy of this writ, and the clerk shall verify, by affidavit, the time, place, and manner of service and file such verification upon completion of the service.

{¶ 10} The clerk is further directed immediately serve **upon all other parties** a copy of the writ in a manner prescribed by Civ.R. 5(B).

{¶ 11} It is so ordered.

Petition granted.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, P.J.
CONCUR.

JUDGE

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