

[Cite as *Planey v. Court of Common Pleas of Mahoning Cty*, 2007-Ohio-7273.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

JOSEPH PLANEY,)	
)	CASE NO. 07 MA 141
RELATOR,)	
)	
- VS -)	OPINION
)	AND
COURT OF COMMON PLEAS OF)	JOURNAL ENTRY
MAHONING COUNTY, OHIO,)	
)	
RESPONDENT.)	

CHARACTER OF PROCEEDINGS: Petition for Writ of Prohibition

JUDGMENT: Petition Dismissed.

APPEARANCES:

For Relator: Joseph Planey, Pro se
880 Squirrel Hill Drive
Youngstown, OH 44512

For Respondent: Attorney Paul J. Gains
Prosecuting Attorney
Attorney Gina DeGenova Bricker
Assistant Prosecuting Attorney
21 W. Boardman Street, 6th Floor
Youngstown, OH 44503

JUDGES:
Hon. Mary DeGenaro
Hon. Gene Donofrio
Hon. Joseph J. Vukovich

Dated: September 13, 2007 PER CURIAM:

{¶1} On August 16, 2007, the Relator, Joseph Planey, filed a pro se complaint with this court seeking a writ of prohibition against the Respondent, the “Court of Common Pleas of Mahoning County, Ohio.” The complaint alleges that the Relator has filed a complaint against his ex-wife and other defendants for damages in the Respondent’s court, that his ex-wife then filed a motion to approve a qualified domestic relations order, and that the Respondent will hear that motion, to the prejudice of the Relator’s action against his wife. He seeks a writ prohibiting the Respondent from entertaining the motion to approve a qualified domestic relations order.

{¶2} On August 23, 2007, the Relator moved for a stay of proceedings in Case No. 1994 DR 00929 (which is presumably the case in which his ex-wife filed the motion) pending the outcome of this action. The Respondent moved to dismiss this action pursuant to Civ.R.12(B)(6) on August 27, 2007, and Relator responded to this motion on September 7, 2007

{¶3} As a preliminary matter, the Respondent argues that the Relator’s complaint must be dismissed because it was improperly captioned. The Relator has brought this action in his own name, rather than in relation to the State of Ohio. The Respondent contends this is a fatal defect, but we disagree.

{¶4} It has long been held that a party’s failure to properly caption a complaint for a writ of *mandamus* as being brought in relation to the State of Ohio is a fatal defect. See *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226; *Thomas v. McGinty*, 8th Dist. No. 87051, 2005-Ohio-6481, at ¶2; *Newsome v. Wolaver*, 2d Dist. No. 05-CA-73, 2005-Ohio-5968, at ¶10. Courts have held to this position because the Revised Code *requires* that mandamus actions “must be * * * in the name of the state on the relation of the person applying* * *.” R.C. 2731.04. There is no similar requirement with regard to actions seeking a writ of prohibition and many prohibition actions have been brought in the name of the relator, rather than in relation to the State. See, e.g., *Fraiberg v. Cuyahoga Cty. Court of Common Pleas, Domestic Relations Div.*, 76 Ohio St.3d 374, 1996-Ohio-0384; *Worrell v. Athens Cty. Court of Common Pleas*, 69 Ohio St.3d 491, 1994-Ohio-0128; *Powell v. Houser*, 7th Dist. No. 07-MA-14, 2007-Ohio-2866;

Cheselka v. Court of Common Pleas of Lake Cty., 11th Dist. No. 2006-L-121, 2007-Ohio-1636; *Roberts v. Nau*, 7th Dist. No. 04-NO-319, 2004-Ohio-3219.

{¶5} We will not import a requirement in a mandamus action to a prohibition action without a reason for so doing. Since the requirement is statutory and there is no similar statute governing actions for a writ of prohibition, we cannot say that the Relator's complaint is fatally defective merely because it is not brought in relation to the State of Ohio.

{¶6} The Respondent also argues that the Relator has failed to state a claim upon which relief can be granted and moved for dismissal under Civ.R. 12(B)(6). This argument does have merit. We must dismiss a complaint for a writ of prohibition under Civ.R. 12(B)(6) if the Relator cannot prove any facts warranting relief. When doing so, we must presume all factual allegations of the writ are true and must make all reasonable inferences in the relator's favor. *State ex rel. United States Steel Corp. v. Zaleski*, 98 Ohio St.3d 395, 2003-Ohio-1630, at ¶8.

{¶7} A writ of prohibition is an extraordinary judicial writ issued by a court of superior jurisdiction directing an inferior tribunal to cease abusing or usurping its judicial functions. *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 73, 1998-Ohio-0275. The purpose of a writ of prohibition is to restrain inferior courts from exceeding their jurisdiction. *Id.* A relator is only entitled to a writ of prohibition if he can prove: 1) the lower court is about to exercise judicial authority; 2) the exercise of authority is not authorized by law; and 3) the relator has no 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. Thus, a writ of prohibition only examines the subject matter jurisdiction of the lower court. *State ex rel. Eaton Corp. v. Lancaster* (1988), 40 Ohio St.3d 404, 409, 534 N.E.2d 46; *Jones* at 73. If the court has subject matter jurisdiction, prohibition is not available to correct an erroneous decision or as a remedy for an abuse of discretion. *State ex rel. Eaton Corp.*

{¶8} We can only grant a writ of prohibition where the lack of 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. If an inferior court completely lacks jurisdiction to act, “the availability or adequacy of a remedy of appeal to prevent the resulting injustice is immaterial to the exercise of supervisory jurisdiction by a superior court to prevent usurpation of jurisdiction by the inferior court.” *State ex rel. Clevenger v. D’Apolito*, 7th Dist. No. 04 MA 174, 2004-Ohio-5129, at ¶6, citing *State ex rel. Adams v. Gusweiler* (1972), 30 Ohio St.2d 326, 329; *State ex rel. Sladoje v. Belskis*, 149 Ohio App.3d 190, 2002-Ohio-4505, at ¶42-47.

{¶9} In this case, the Relator makes three main allegations: 1) that he has filed a complaint against his ex-wife and other defendants in the Mahoning County Court of Common Pleas and that the complaint has been served on those defendants; 2) that his wife filed a motion to approve a qualified domestic relations order after she was served with the complaint; and, 3) that the court will hear the motion to approve a qualified domestic relations order and that doing so will prejudice his case against his ex-wife and the other defendants. These allegations do not state a claim for a writ of prohibition.

{¶10} Clearly, the Realtor has alleged that a court is about to exercise judicial authority, since he has stated that the court will rule on his ex-wife’s motion. However, the Relator has failed to allege any facts which could be interpreted as alleging that the trial court did not have jurisdiction to hear the motion. Clearly, the Mahoning County Court of Common Pleas, domestic relations division, has the jurisdiction to rule on a motion to approve a qualified domestic relations order and the Relator has not alleged that any other court is about to entertain that motion.

{¶11} A writ of prohibition is only appropriate when a court is about to exercise judicial authority without jurisdiction to do so. In this case, the Relator has failed to allege any facts demonstrating that the Respondent does not have jurisdiction to exercise the judicial authority requested of it. Accordingly, the Relator has failed to state a claim for relief. The Respondent’s Civ.R. 12(B)(6) motion to dismiss is granted.

{¶12} The Relator’s Motion for Writ of Prohibition is hereby dismissed. Costs

taxed against the Relator. Final order. Clerk to serve notice on the parties as provided by the Ohio Rules of Civil Procedure.

Donofrio, J., concurs.

Vukovich, J., concurs.

DeGenaro, J., concurs.