

**ORIGINAL**

**IN THE OHIO SUPREME COURT  
2014**

State ex rel. Aristides Jurado,	:	
	:	
Relator,	:	Case No. 2014-1225
	:	
v.	:	ORIGINAL ACTION IN
	:	MANDAMUS/PROHIBITION
Office of Disciplinary Counsel, et al.,	:	
	:	
Respondents.	:	

---

**RESPONDENTS FRANKLIN COUNTY COURT OF COMMON PLEAS,  
DOMESTIC RELATIONS AND JUVENILE BRANCH, JUDGE TERRI  
JAMISON, AND MAGISTRATE JILL MATTHEWS' MOTION TO DISMISS**

---

**RON O'BRIEN  
PROSECUTING ATTORNEY  
FRANKLIN COUNTY, OHIO**

Aristides Jurado  
3963 Easton Way  
Columbus, OH 43219

Scott O. Sheets (0076837)  
Assistant Prosecuting Attorney  
373 S. High Street, 13<sup>th</sup> Floor  
Columbus, Ohio 43215  
Phone: 614.525.3520  
Fax: 614.525.6012  
ssheets@franklincountyohio.gov  
Attorney for Juvenile Court Respondents

Relator

**FILED**  
AUG 08 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

## MOTION TO DISMISS

Respondents Franklin County Common Pleas Court, Division of Domestic Relations and Juvenile Branch, Judge Terri Jamison and Magistrate Jill Matthews (“Respondents”) hereby seek dismissal of Relator’s Complaint pursuant to Civ. R. 12(B)(6). Relator seeks a writ of prohibition preventing Respondents from “exercising judicial power that is unauthorized by law, in the Juvenile (Custody) Case NO. 12JU-11-14479.”<sup>1</sup> (Complaint p. 2). He also seeks a writ of mandamus requiring Respondents “to exercise certain judicial duties” and a stay of the proceedings in the aforementioned juvenile custody case. *Id.* The body of Relator’s complaint provides Relator’s view of the history of the juvenile custody case and outlines his dissatisfaction and disagreement with various decisions by Magistrate Matthews and Judge Jamison. Further, Relator devotes a substantial amount of his Complaint to criticisms of the *guardian ad litem* in the juvenile custody case.

- **Prohibition**

In seeking prohibition, Relator seeks to prevent Respondents from proceeding with the juvenile custody case, specifically with contempt proceedings and trial. (Complaint pp. 27, 31). Relator cannot meet the requirements for a Writ of Prohibition to issue. Relator must establish (1) that the court or officer against whom the writ is sought is about to exercise judicial or quasi-judicial power, (2) that the exercise of that power is unauthorized by law, and (3) that denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law. *Manrow v. Court of Common Pleas of Lucas County*, 20 Ohio St.3d 37, 39, 485 N.E.2d 713 (1985). Further, “unless jurisdiction is patently and unambiguously lacking, a tribunal having general subject-matter jurisdiction can determine its own jurisdiction, and a party

---

<sup>1</sup> Hereinafter, Respondents will refer to this case as “the juvenile custody case.”

challenging that jurisdiction has an adequate remedy in the ordinary course of law by appeal.”

*State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006 Ohio 6573, 859 N.E.2d 923, ¶ 16.

Respondents concede the first element. However, Relator cannot meet the other necessary elements. Relator cannot prove that Respondents patently and unambiguously lack jurisdiction over the subject matter. The juvenile court has exclusive original jurisdiction to determine the custody of any child not a ward of another state. R.C. § 2151.23(A)(2). Clearly, respondents do not patently and unambiguously lack jurisdiction. Respondents are empowered and obligated by statute to hear and decide custody cases. Relator’s complaints of irregularities or errors in the underlying proceeding do not demonstrate a lack of jurisdiction. Even if Relator has an argument concerning the merits of Respondents orders and actions in the underlying case, there is absolutely no question that Respondents had subject matter jurisdiction and, therefore, Relator cannot satisfy the second element necessary for a writ of prohibition to issue.

Finally, as this Court has stated many times, “a writ of prohibition is not a substitute for an appeal.” *Manrow, supra*, at 39. It appears that the underlying basis for Relator’s complaint stems from disagreement or dissatisfaction with Respondents’ procedural or substantive legal rulings in the juvenile custody case. These rulings are subject to appeal. Plaintiff has the ability to address any disagreements with magistrate rulings through objections to the trial judge and can appeal any rulings of the trial judge to the Tenth District Court of Appeals. An adequate remedy at law will preclude relief in prohibition. *Id.* Relator cannot demonstrate the lack of an adequate legal remedy.

As Relator has failed to meet the requirements for the issuance of a writ of prohibition, his claim must be dismissed.

- **Mandamus**

For very similar reasons as those noted above, Relator also cannot meet the requirements necessary for a writ of mandamus. It is clear that the genesis of Relator's Complaint is his disagreement with Respondents' decisions and manner of proceeding in the juvenile custody case. Relator complains that a Motion to Modify Child Support and a Motion to Remove the *Gudardian ad Litem* from the case either have not been decided or have not been decided to his satisfaction. (Complaint pp. 20-22; 24-25). He points out the requirement of confidentiality of juvenile records without requesting relief or pointing out facts indicating any controversy. (Complaint p. 22). In seeking mandamus, Relator seeks to have this Court compel Respondents to hear motions and vacate previous orders and decisions. (Complaint p. 29). He also seeks to compel Respondents to issue rulings and/or make decisions based on his interpretation of laws and rules. (Complaint p. 30). In fact, this portion of Relator's request for relief seems targeted at the merits of various issues pending before Respondents.

To be entitled to the requested writ of mandamus, Relator must show a clear legal right to the requested relief, a clear legal duty on the part of Respondents to provide it, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012 Ohio 69, 960 N.E.2d 452, ¶ 6. Here, Plaintiff cannot meet any of the elements necessary to justify a writ of mandamus.

As to the first and second elements, Relator has basically asserted his disagreement with the merits and/or manner of Respondents' decisions in the juvenile custody case. Rather than demonstrating a clear legal right to the requested relief or a clear legal duty on the part of Respondents to provide it, Relator simply sets forth his legal position on the merits of many issues pending beofre Respondents. Mandamus is not a vehicle for a litigant to have this Court

substitute its discretion for that of a trial court. In other words, simply having a position on the merits of various matters pending before another court does not demonstrate a clear entitlement to relief or a clear duty to act.

Further, Relator seeks to compel Respondents to decide motions and/or matters which he asserts have not been timely acted upon by Respondents. However, as stated by this Court mandamus will not “generally issue to compel a court to release its decisions promptly.” *State ex rel. Nalls v. Russo*, 96 Ohio St.3d 410, 2002 Ohio 4907, 775 N.E.2d 522, ¶ 31. Thus, Relator’s request in this regard must be denied.

Finally, Relator has an adequate remedy at law. He can file objections to any magistrate’s decision and can appeal any rulings of the trial court. Any issues Relator has with decisions on custody, on child support, or even on the removal of a guardian are all appealable. *See, Nalls* at ¶ 30; *State ex rel. Mosier v. Fornof*, 126 Ohio St.3d 47, 2010 Ohio 2516, 930 N.E.2d 305, ¶ 1, 7; *State ex rel. Willacy v. Smith*, 78 Ohio St.3d 47, 50-51, 676 N.E.2d 109 (1997); *In re Morgan*, 3<sup>rd</sup> Dist. No. 9-04-02, 9-04-03, 2004 Ohio 4018, ¶ 59. Further, as stated in *Willacy*, “contentions that appeal from any subsequent adverse final judgment would be inadequate due to time and expense are meritless.” *Id.* at 50.

Relator cannot demonstrate any of the elements necessary for a writ of mandamus. Most importantly, Relator has the right to appeal Respondents’ decisions. Given all of the above, Relator’s request for mandamus must be denied.

- **Mootness**

In addition, a lack of a case or controversy makes much of what Relator requests moot. Since Relator filed this action, the July 22, 2014 hearing which he sought to prevent was vacated. Further, Respondent Judge Jamison has issued a decision, attached hereto as Exhibit A, deciding

Relator's Motion to Modify Child Support and also setting Relator's Motion to Remove the Guardian ad Litem for hearing on August 27, 2014. The Court's decision renders moot Relator's request that the Court decide these two motions.

- **Conclusion**

For all of the foregoing reasons, Relator's request for a writ of mandamus and a writ of prohibition must be denied. Respondents clearly have jurisdiction over the juvenile custody case and Relator has an adequate remedy at law by way of objections or appeal. Finally, any request related to motions which have been or soon will be decided is moot.

Respectfully submitted,

**RON O'BRIEN  
PROSECUTING ATTORNEY  
FRANKLIN COUNTY, OHIO**



---

Scott O. Sheets (0076837)  
Assistant Prosecuting Attorney  
373 S. High Street, 13<sup>th</sup> Floor  
Columbus, Ohio 43215  
Phone: 614.525.3520  
Fax: 614.525.6012  
ssheets@franklincountyohio.gov  
Attorney for Juvenile Court Respondents

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing will be served on Relator at his address of record this 8<sup>th</sup> day of August, 2014.



---

Scott O. Sheets

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
DIVISION OF DOMESTIC RELATIONS AND JUVENILE BRANCH

Kathy Hernandez,  
Plaintiff,

vs.

Aristides Jurado,  
Defendant.

Case No. 12 JU 14479

JUDGE JAMISON

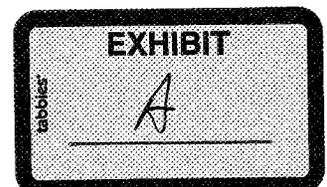
Magistrate Matthews

ENTRY

This matter came on for hearing on August 4, 2014, on Defendant Aristides Jurado's Motion to Modify Child Support, filed on October 23, 2013. Present for the hearing were Plaintiff, Kathy Hernandez; Plaintiff's counsel, Erika Smitherman; and Defendant, Aristides Jurado.

The Court finds that Defendant Jurado has not cooperated with opposing counsel to exchange discovery with regards to his motion. Opposing counsel has a Motion to Compel Discovery also pending before the Court. Mr. Jurado was instructed in court the previous Friday, when the Court noted he was ill-prepared, to be prepared to prosecute his motion the following Monday. He was instructed to have his questions prepared and to have his exhibits marked and ready.

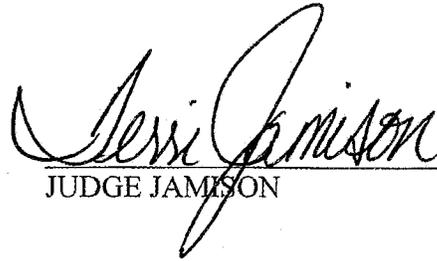
"Federal and state tax documents provide a starting point for calculating a parent's income for child support purposes, but they are not the sole factor for the trial court to consider." *Roubanes vs. Roubanes*, 10th Dist. Franklin No. 13AP-369, 2013-Ohio-5778, ¶8. The court in *Roubanes* held it was an abuse of discretion to consider only tax returns in determining a party's income, without any other supporting evidence. *Id.* at ¶14. Mr. Jurado did not have his past year's tax return prepared or filed. He did not have any W2s or 1099 forms; he produced only a spreadsheet, that he had prepared, as evidence of his income. He testified to business expenses but did not produce any receipts or other verifiable documentation to support his business deductions, as is required.



Notwithstanding the Court's instruction, Mr. Jurado was unorganized, and the Court finds the Plaintiff's oral motion to dismiss well-taken.

It is hereby ordered that Defendant's Motion to Modify Child Support is **DISMISSED**. This case is scheduled for further hearing on August 27, 2014, at 1:30 p.m., in front of Judge Jamison in Courtroom 65, on Defendant's Emergency Motion to Remove the Guardian ad Litem.

**IT IS SO ORDERED.**

  
JUDGE JAMISON