

IN THE SUPREME COURT OF OHIO

MARIAN LESTER,)	CASE NO. 2014-1914
)	
Relator,)	Original Action in Prohibition and
)	Mandamus Arising From
vs.)	Cuyahoga County Probate Court
)	Case No. 2014 GRD 199316
JUDGE LAURA J. GALLAGHER,)	
)	
Respondent.)	

**RESPONDENT’S BRIEF IN OPPOSITION TO RELATOR’S NOVEMBER 24, 2014
“EMERGENCY MOTION TO STAY PROCEEDINGS IN THE CUYAHOGA COUNTY
PROBATE COURT AND TO VACATE JUDGMENT ENTRY”**

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)	<u>RESPONDENT’S BRIEF IN</u>
Respondent.)	<u>OPPOSITION TO RELATOR’S</u>
)	<u>NOVEMBER 24, 2014 ‘EMERGENCY</u>
)	<u>MOTION TO STAY PROCEEDINGS IN</u>
)	<u>THE CUYAHOGA COUNTY PROBATE</u>
)	<u>COURT AND TO VACATE</u>
)	<u>JUDGMENT ENTRY”</u>

STATEMENT OF FACTS AND PROCEEDINGS

Pursuant to this Court’s November 26, 2014 order directing respondent Judge Laura J. Gallagher (“respondent”) to file no later than December 3, 2014 a response to the relator’s emergency motion to stay proceedings in the Cuyahoga County Probate Court and to vacate judgment entry, respondent respectfully submits this memorandum in opposition to the November 24, 2014 “Emergency Motion to Stay Proceedings in the Cuyahoga County Probate Court and to Vacate Judgment Entry” filed by relator Marian Lester (“relator”).¹

In order to respond to relator’s request for this Court to stay the Probate Division court proceedings, it is necessary to review briefly the proceedings in that court as well as in the

¹ Respondent has separately filed and contemporaneously requested a two (2) day extension of time to file her response to the relator’s “Emergency Complaint for Writ of Prohibition, Seeking a Final and Alternative Writ or, in the Alternative, Emergency Complaint for Writ of Mandamus, Seeking a Final and Alternative Writ” (hereafter “Complaint”). To the extent that relator’s December 1, 2014 “Revised Emergency Motion to Stay” requires a separate response, respondent anticipates that her response to the Complaint will most fully address all matters that have been presented to this Court, including those set forth in that more recent motion.

Juvenile Division, particularly in light of more recent developments that relator has now acknowledged.

In particular, on June 26, 2014, Michael Fields filed an application to be appointed guardian for a twelve (12) year old minor in the Probate Division of the Cuyahoga County Court of Common Pleas pursuant to R.C. 2111.03(C). The child's mother has passed away on June 15, 2014; the whereabouts of the child's biological father were unknown; and the decedent's last will and testament nominated Fields to be the child's guardian. After initially consenting to Fields' application, the relator, who is the child's maternal grandmother, filed on July 22, 2014 her own application in the Probate Court to be named guardian. A full hearing on both applications was held in the Probate Court on September 26, 2014. At the conclusion of the full-day hearing, both parties requested and were granted until October 27, 2014 to submit closing arguments and brief additional legal issues, with no decision to be issued until after the date provided for the parties' submissions. See Relator's November 24, 2014 "Emergency Motion to Stay Proceedings in the Cuyahoga County Probate Court and to Vacate Judgment Entry" at Exhibit 1.

Four (days) after the Probate Court hearing was held, however, relator filed in the Juvenile Division of the Cuyahoga County Court of Common Pleas on September 30, 2014 a complaint for legal custody, alleging that the child would be a neglected or dependent child if she were placed in Mr. Fields' custody – even though Mr. Fields was not named as a defendant to the case. See Relator's Complaint at Exhibit 3. Relator additionally made an "emergency *ex parte* motion to designate" relator as the residential parent and legal custodian of the child.

Relator's Complaint and emergency motion did not disclose anything about the guardianship proceedings that were then pending in the Probate Court. See Relator's Complaint at Exhibit 3. On October 6, 2014, the Juvenile Court magistrate to whom the matter

had been referred issued a magistrate's order granting relator's emergency *ex parte* motion in part, committing the child to the emergency temporary custody of relator pending further hearing pursuant to Rule 13 of the Ohio Rules of Juvenile Procedure. See Relator's Complaint at Exhibit 5. The Juvenile Court hearing was thereafter scheduled to occur on December 1, 2014.

In the meantime, on October 2, 2014, relator filed in the Probate Court a motion asking that court to certify jurisdiction to the Juvenile Court. Respondent denied that motion on October 18, 2014. Relator moved the Probate Court for reconsideration on October 28, 2014, but that motion was denied on November 4, 2014.

On November 6, 2014, relator commenced this original action in prohibition and mandamus in the Supreme Court of Ohio. Although relator's Complaint requested alternative writs, no such writs were issued.

On November 19, 2014, respondent Judge Gallagher issued a judgment entry that granted Mr. Fields guardianship over the child. See Relator's November 24, 2014 "Emergency Motion to Stay Proceedings in the Cuyahoga County Probate Court and to Vacate Judgment Entry" at Exhibit 1.

On November 20, 2014, the Juvenile Court magistrate assigned to conduct proceedings on relator's complaint for neglect and dependency issued a magistrate's decision that recites the following in relevant part:

It has been brought to the court's attention that the Probate Division of Cuyahoga County has exercised jurisdiction in this matter. That Court held a full hearing in the matter with substantially the same parties as are involved in this matter. Letters of Guardianship were issued. As part of the Court's order, a full investigation of the parties was conducted by the Probate Division and the parties were found to be suitable.

The report and journal entry from the Probate Division are made a part of the record in this matter.

In light of the order of the Probate Division and its findings, this Court finds that there is no need to proceed with this matter in this Court and that as a matter of judicial economy, this matter should be dismissed and IT IS SO ORDERED.

It is further ordered that the hearing scheduled for 12-1-14 at 9:00 AM in this Court is canceled.

See Relator's December 1, 2014 "Revised Emergency Motion to Stay" at Exhibit D.

On November 24, 2014, relator filed her "Emergency Motion to Stay Proceedings in the Cuyahoga County Probate Court and to Vacate judgment Entry." Pursuant to this Court's November 26, 2014 order, respondent hereby submits her response to that motion.

ARGUMENT AND LAW

Relator's November 24, 2014 motion asks this Court to stay all proceedings in the Probate Court on the grounds that the respondent has acted (1) without jurisdiction, (2) inconsistently with the Juvenile Court; and (3) contrary to the child's best interest.

Contrary to relator's contention, however, the respondent has not acted without jurisdiction or inconsistently with the Juvenile Court. Indeed, the record more accurately reflects that the relator has attempted to create a jurisdictional conflict between the Probate and Juvenile Divisions by (1) filing the Juvenile Court proceedings *after* the Probate Court proceedings were already being conducted; (2) *failing to disclose to the Juvenile Court* that the Probate Court proceedings were already being conducted in which relator and Mr. Fields were parties; (3) seeking emergency *ex parte* custody from the Juvenile Court in a proceeding in which **Mr. Fields was not even named as a party**; and (4) having obtained emergency *ex parte* relief from the Juvenile Court under dubious circumstances, using that **provisional emergency order** as a

means to *divest* respondent of jurisdiction to continue conducting the guardianship proceedings that remained pending in the Probate Court.

While the merits of relator's jurisdictional challenges will be addressed more fully in respondent's response to the Complaint, and the merits of the underlying guardianship determination is a matter that can and should be determined through plain and adequate remedies available in the ordinary course of the law through adversarial court proceedings in which all affected parties may have the opportunity to be heard, relator's instant motion to stay the Probate Court proceedings is without merit for several reasons.

First, relator acknowledges that respondent's November 19, 2014 judgment entry granting Mr. Fields' application for guardianship "may constitute a final Order which Relator may have to incur the cost to appeal." See Relator's December 1, 2014 "Revised Emergency Motion to Stay" at p. 2. But the time and expense involved in an appeal does not warrant a stay or extraordinary relief, for Ohio law establishes that appeal following judgment is not rendered inadequate such that a party may secure a writ of prohibition due to the potential time and expense involved. *State ex rel. Vanni v. McMonagle*, 137 Ohio St.3d 568, 2013-Ohio-5187, 2 N.E.3d 243, ¶ 16.

Second, relator acknowledges that the November 20, 2014 Juvenile Court magistrate's decision dismissing relator's Juvenile Court case and cancelling the December 1, 2014 hearing effectively eliminates any supposed jurisdictional conflict that relator may have tried to create between the Probate and Juvenile Divisions. Moreover, relator acknowledges that the Juvenile Court's decision may be challenged through adequate remedies at law, which at least include

filing objections “to the Juvenile Court Magistrate’s Decision, dismissing the Juvenile Court case.” See Relator’s December 1, 2014 “Revised Emergency Motion to Stay” at p. 2.

In short, relator’s motion to stay does not set forth any legitimate grounds to stay the Probate Court proceedings. Indeed, relator’s action here and pending motion to stay would effectively cause this Court to revive a jurisdictional conflict that the Probate and Juvenile Court divisions below have effectively resolved. If the rulings rendered by those courts are incorrect, those are matters that can best be determined through plain and adequate remedies at law in which all interested parties may be heard. These circumstances do not warrant the exercise of this Court’s extraordinary supervisory authority nor do they warrant a stay of those proceedings.

Respondent Judge Gallagher accordingly urges this Court to deny relator’s November 24, 2014 “Emergency Motion to Stay Proceedings in the Cuyahoga County Probate Court and to Vacate judgment Entry.”

Respectfully submitted,

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PROOF OF SERVICE

Pursuant to S.Ct.Prac.R. 3.11, a true copy of the foregoing Respondent's Brief in Opposition to Relator's November 24, 2014 "Emergency Motion to Stay Proceedings in the Cuyahoga County Probate Court and to Vacate Judgment Entry" was served this 3rd day of December 2014 by e-mail upon:

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