

ORIGINAL

IN THE SUPREME COURT OF OHIO  
Supreme Court Case Number 2014-19510

STATE OF OHIO ex. rel.  
GABRIELLA MOIR FKA DENKEWALTER

Relator

v.

MARY R. KOVACK, Judge

And

MEDINA COUNTY  
DOMESTIC RELATIONS COURT

And

CAROL J. DESZO, Judge

And

STEPHAN J. COLLINS, Magistrate

And

SUMMIT COUNTY  
DOMESTIC RELATIONS COURT

Respondents

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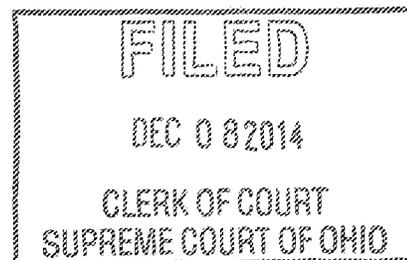
RESPONDENT'S MOTION TO DISMISS

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SHERRI BEVAN WALSH  
Prosecuting Attorney

JOHN F. GALONSKI (0061792)  
Assistant Prosecuting Attorney  
53 University Avenue, 7<sup>th</sup> Floor  
Akron, Ohio 44308  
(330) 643-8379  
Email: galonski@prosecutor.summitoh.net  
*Counsel for Judge Deszo, Magistrate Collins,  
Summit County Domestic Relations Court*



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CLERK OF COURT  
SUPREME COURT OF OHIO

Now comes Respondents Judge Deszo, Magistrate Collins, and the Summit County Domestic Relations Court, by and through undersigned counsel, and respectfully moves this Court for an Order to dismiss Relator's Petition for Writ of Prohibition for the reasons that it is asking for actions beyond what is proper.

A. Background

This matter stems from a decision issued by the Medina County Domestic Relations Court on October 23, 2007 in Case Number 04 DR 0638. Judge Kovac filed a motion to the Supreme Court of Ohio to appoint Judge Deszo of Summit County Domestic Relations Court as visiting Judge. Effective October 15, 2007, Judge Deszo, as visiting judge, was assigned to the case. On January 16, 2014, Judge Kovac appointed Magistrate Collins, of Summit County Domestic Relations Court to hear further proceedings in this case. Realtor alleges Judge Deszo was appointed and is the only person that should hear this case. However, this case originates from Medina County. Judge Kovac is the administrative judge in Medina County, and thus has the authority to appoint magistrates over this case pursuant to Ohio Civil Rule 53.

B. Writ of Prohibition

For this Court to issue a writ of prohibition, Relator must establish: (1) Respondents are about to exercise judicial power, (2) the exercise of that power is unauthorized by law, and (3) the denial of the writ will result in injury for which no other adequate remedy exists. *St. ex rel. Sharon Hall v. Judge Judith Cross*, 9<sup>th</sup> Dist., No. 25073, citing *St. ex rel. Eaton Corp. v. Lancaster* (1988), 40 Ohio St.3d 404, 409; *Dubose v. Court* (1980), 64 Ohio St.2d 169, 171.

Realtor's Complaint argues Judge Kovack has no authority to assign or refer matters to magistrates. Realtor is anticipating that Magistrate Collins should not be allowed to hear the case as he was appointed through Judge Kovac. Realtor alleges that only Judge Deszo was appointed

and thus neither Judge Kovac nor Judge Deszo should be able to appoint a magistrate to hear this case. However, Judge Kovac is the administrative Judge of her court. Assigning magistrates to cases is a perfunctory duty of the administrative judge. Ohio Civil Rule 53(A) allows that, "A court of record may appoint one or more magistrates who shall have been engaged in the practice of law for at least four years and be in good standing with the Supreme Court of Ohio at the time of appointment." The court of record in this case is the Medina County Domestic Relations Court, Magistrate Collins has been engaged in the practice of law for at least four years, is in good standing with the Supreme Court of Ohio, and thus, his appointment to this case is valid. The second prong of the test fails as this was authorized by law.

The third prong of the test that would allow this court to issue a writ of prohibition also fails. The third prong states the denial of the writ will result in injury for which no other adequate remedy exists. *St. ex rel. Sharon Hall v. Judge Judith Cross*, 9<sup>th</sup> Dist., No. 25073, citing *St. ex rel. Eaton Corp. v. Lancaster* (1988), 40 Ohio St.3d 404, 409; *Dubose v. Court* (1980), 64 Ohio St.2d 169, 171. In the case at bar, Realtor has other remedies available by law. As stated in Ohio Civil Rule 53(D)(4)(e)(i),

Either party has fourteen (14) days to file an objection to the magistrate's decision. All objections must be accompanied by a \$10.00 filing fee. The parties must serve a copy of the objection on the other side via regular mail. If no objection is filed, this decision will become the final order of the court. [...] The time for filing objections begins to run when the Magistrate files a decision.

After a magistrate's decision is issued and adopted by the court, either party can appeal to the Judge if they are not satisfied. If there is still an issue, they can appeal to the Ninth District Court of Appeals.

Respondent's acknowledge there is a pending case before the court of appeals and recognize that the question of whether recusal removes the authority to appoint a magistrate of

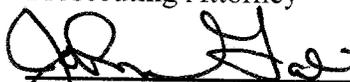
another county to hear the pending matter or whether the appointed visiting judge has the authority to appoint a magistrate in this case may be decided within that appeal. However, ORC 2301.03(I) provides “the judge of the division of domestic relations, senior in point of service, shall be the administrator of the domestic relations division and its subdivisions and departments and shall have charge of the employment, assignment, and supervision of the personnel of the division [...].” It is our position that the administrative judge is a separate function from being a decider of law in a specific case. Recusal from a substantive matter in a particular case should not absolve the authority that an administrative judge has to perform the perfunctory duties required by law. Therefore, Judge Kovac, as administrative judge, has the authority to assign Magistrate Collins to hear matters in this case.

Accordingly, Respondent respectfully moves this Court to dismiss this action.

Respectfully submitted,

**SHERRI BEVAN WALSH**

Prosecuting Attorney



**JOHN F. GALONSKI (0061792)**

Assistant Prosecuting Attorney

53 University Avenue, 7<sup>th</sup> Floor

Akron, Ohio 44308

(330) 643-8379

(330)-643-8708 (fax)

Email: galonski@prosecutor.summitoh.net

*Counsel for Judge Deszo, Magistrate Collins, Summit  
County Domestic Relations Court*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Dismiss was sent on the 5<sup>th</sup> day of December 2014. I certify that a copy of the forgoing has been served by regular U.S. Mail upon:

**Cheryl A. Lukacs (0058640)**  
**The Lukacs Law Firm LLC**  
**753 Avon Belden Road**  
**Avon Lake, OH 44012**  
**Phone: 440.930.2921**  
**Fax: 440.930.2922**  
**Email: Counsel for Relator, Gabriella Moir**

**Medina County Prosecutor's Office**  
**72 Public Square**  
**Medina, OH 44256**



**JOHN F. GALONSKI**  
Assistant Prosecuting Attorney