

IN THE SUPREME COURT OF OHIO

AMANDA WILSON ILER : CASE NO.: 15-0146
RELATOR :
VS. :
JUDGE BRETT M. SPENCER, et al. :
RESPONDENT :

CIVIL RULE 12 (B)(6) MOTION TO DISMISS RELATOR'S COMPLAINT FOR
WRIT OF PROHIBITION

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Seaman, Ohio 45679

Pro Se Relator

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Adams County Prosecuting Attorney
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Supreme Court No. 0061368

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TABLE OF CONTENTS

Table of Authorities ii

Motion 1

Statement of the Case 2

Argument 3

Conclusion 5

Certificate of Service 6

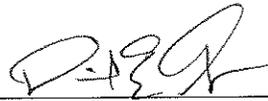
TABLE OF AUTHORITIES

	<u>Page No.</u>
Rules:	
Ohio Civil Rule 12 (B)	3
Cases:	
<i>State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.</i> , 65 Ohio St.3d 545, 605 N.E. 2d 378 (1992)	3
<i>State ex rel. Hickman v. Capots</i> , 45 Ohio St.3d 324, 544 N.E.2d 639 (1989)	3
<i>O'Brien v. Univ. Community Tenants Union, Inc.</i> , 42 Ohio St.2d 242, 245, 327 N.E. 2d 753, 755 (1975)	3
<i>McAuley v. Smith</i> , 92 Ohio St.3d 393, 395, 696, N.E.2d 572 (1998)	3
<i>State ex rel. Bell v. Pfeffer</i> at 118	4
<i>State ex rel. Husted v. Brunner</i> , 123 Ohio St.3d 288	4

MOTION

Respondent Michael Farahay respectfully moves this Court for an ORDER dismissing the Relators Complaint for failure to state a claim upon which relief can be granted pursuant to Ohio Civ. R. 12 (B)(6). The Respondent's reasons are set forth hereafter.

Respectfully submitted,



David E. Grimes, Counsel for Respondent

STATEMENT OF THE CASE

Relator, Amanda Iler filed an Original Action In Habeas, Mandamus and Prohibition with this Court on January 27, 2015. In her Prayer for Relief, she asks for orders that would pertain to her custody case in Adams County Common Pleas Court Case No.: 20035123. The last decision the trial court made in that case was a Judgment Entry dated June 26, 2014 affirming the Magistrate's Decision. In this Entry, the Court determined that Respondent Michael Farahay (Father) be designated the residential parent and legal custodian of Mackenzie Farahay, not Relator Amanda Iler (Mother). Relator appealed this decision in the Court of Appeals, Fourth Appellate District. The Court of Appeals has yet to rule on Relator's appeal.

On October 23, 2014 Relator filed a Complaint for Writ of Prohibition in the Court of Appeals, Fourth Appellate District asking for relief in Adams County Common Pleas Case No.: 20035123. Upon Motion of the Respondent Judge Brett M. Spencer, the Court of Appeals dismissed Relators complaint for writ of prohibition on December 18, 2014. Relator did not appeal the Court of Appeals Decision to this Court.

ARGUMENT

Relator's Complaint fails to state a claim upon which relief can be granted and must be dismissed pursuant to Civ. R. (12) (B).

A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 605 N.E. 2d 378 (1992). When a party files a motion to dismiss for failure to state a claim, all the factual allegations of the complaint must be taken as true and all reasonable inferences must be drawn in favor of the non-moving party. However, while the factual allegations of the complaint are taken as true, the same cannot be said about unsupported conclusions. Unsupported conclusions of a complaint are not considered admitted, and are not sufficient to withstand a motion to dismiss. *State ex rel. Hickman v. Capots*, 45 Ohio St.3d 324, 544 N.E.2d 639 (1989).

In order for a court to grant a motion to dismiss for failure to state a claim, it must appear "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245, 327 N.E. 2d 753, 755 (1975).

To warrant a writ of prohibition, the relator must establish the existence of three prerequisites: (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 clearly unauthorized by law, and (3) denial of the writ will cause injury for which there is no adequate remedy in the ordinary course of law. *McAuley v. Smith*, 92 Ohio St.3d 393, 395, 696, N.E.2d 572 (1998).

The Relator cannot establish even one of the three prerequisites. The trial court is not about to exercise judicial power. The original custody case is currently pending appeal in the

Fourth District Court of Appeals. Judge Spencer, against whom the writ of prohibition is sought, cannot exercise judicial power until the appellate court rules. Respondent Michael Farahay is neither a court or officer and is certainly incapable of exercising judicial power.

The second prerequisite is exercising power clearly unauthorized by law. Judge Spencer is the duly elected Common Pleas Court Judge of Adams County presiding over the General, Probate and Juvenile Divisions. Absent a patent and unambiguous lack of jurisdiction, a court of general subject matter jurisdiction can determine its own jurisdiction. *State ex rel. Bell v. Pfeffer* at 118. If Relator is contesting jurisdiction, her remedy is appeal. In her pending appeal, Relator has not raised the issue of jurisdiction.

As for the third prerequisite, Relator does have adequate remedy in the ordinary course of law. Relator has adequate remedy in the Fourth Appellate District. Relator is actively pursuing this remedy by direct appeal of the trial court's order. Relator did not pursue her other remedy. She filed for a writ of prohibition in the Fourth District Court of Appeals. The Court of Appeals dismissed her case. Relator did not seek to appeal that decision to this Court. Appealing the Fourth District's decision would have been the appropriate remedy for the Relator, not the Complaint that is currently before the Court.

Relator also asserts a claim for a writ of mandamus. To be entitled to a writ of mandamus, Relator must establish a clear legal right to the requested relief, a corresponding clear legal duty and a lack of an adequate remedy in the ordinary course of the law. *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 288. Again, Relator cannot establish any of these elements, let alone all three. Relator has not set forth anything establishing she has the right to the relief she has requested or this Court's legal duty to oblige her. Relator has adequate remedy and is currently pursuing that remedy in the Fourth Appellate District.

CONCLUSION

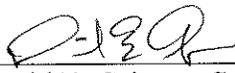
Respondent Michael Farahay respectfully requests that Relator's Complaint be dismissed in its entirety for failure to state a claim upon which relief can be granted. Relator cannot establish any of the three prerequisites for a writ of prohibition or a writ of mandamus. In the alternative Respondent Michael Farahay requests that he be dismissed as a party to this proceeding. Relator's Prayer for Relief focuses on Respondent Judge Brett Spencer and ORDERS of his Court. As much as Respondent Michael Farahay would like to issue or vacate orders in this custody case, he is powerless to do so and is not a proper party in this matter.



David E. Grimes, Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Dismiss was sent by regular U.S. Mail, postage pre-paid to Amanda Wilson Iler, Relator, 121 East Sixth Street, Seaman, Ohio 45679 and upon David Kelly, Adams County Prosecutor, by placing a copy in his box located at the Adams County Courthouse this 20th day of February, 2015.



David E. Grimes, Counsel for Respondent