

IN THE SUPREME COURT OF OHIO

Case No. 2015-0173

STATE *ex rel.* AYMAN DAHMAN, M.D., *et al.*
Relators,

-vs-

HON. BRIAN J. CORRIGAN, *et al.*
Respondents.

ORIGINAL ACTION IN PROHIBITION

RESPONDENTS AUSTIN, MICHELLE, AND BRIAN HASTINGS'
MOTION TO INTERVENE

Michael F. Becker, Esq. (#0008298)
Pamela Pantages, Esq. (#0046840)
THE BECKER LAW FIRM, L.P.A.
134 Middle Avenue
Elyria, Ohio 44030
(440) 323-7070
FAX: (440) 323-1879
mbecker@beckerlawlpa.com

Paul W. Flowers, Esq. (#0046625)
PAUL W. FLOWERS CO., L.P.A.
Terminal Tower, 35th Floor
50 Public Square
Cleveland, Ohio 44113
(216) 344-9393
FAX: (216) 344-9395
pwf@pwfco.com

Attorneys for Respondents,
Austin Hastings, et al.

Anna Moore Carulas, Esq. (0037161)
Douglas G. Leak, Esq. (0045554)
ROETZEL & ANDRESS, LPA
1375 East 9th Street, 9th Floor
Cleveland, Ohio 44114
acarulas@ralaw.com
dleak@ralaw.com

Attorneys for Relators

Charles E. Hannan, Esq.
The Justice Center, Courts Tower,
8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
channan@prosectuor.cuyahogacounty.us

Attorney for Respondents,
Hon. Brian J. Corrigan and Hon. John
J. Russo

MOTION

Intervening Respondents, Austin, Michelle, and Brian Hasting (“Hastings”), request that they be permitted to intervene in this original action pursuant to Civ. R. 24. Respondents Hastings are the Plaintiffs in the underlying civil lawsuit that lies at the heart of this prohibition action, *Hastings v. Southwest General Health Center*, Cuyahoga C.P. Case No. 785788, which has been acknowledged by Relators, Ayman Dahman M.D. and Mary Jo Alverson, C.N.M. These Respondents possess a fundamental interest in ensuring that their civil claims for damages are litigated before the properly appointed Visiting Judge, who in this case is Hon. Lilian Greene. *Sup. R. 36(B)*. Furthermore, Respondents are entitled to a prompt resolution of the dispute in accordance with the guidelines set forth in *Sup. R. 39*. They are therefore deserving of inclusion in this action in order to protect their legal rights.

Consistent with *Sup. Ct. Prac. R. X, Section 2*, intervention in original actions is generally governed by *Civ.R. 24*. *State ex rel. First New Shiloh Baptist Church v. Meagher*, 82 Ohio St.3d 501, 504, 1998-Ohio-192, 696 N.E.2d 1058, 1060. When the proposed intervenor possesses a legitimate interest in the proceeding, intervention is to be liberally granted. *Dept. of Adm. Services, Office of Collective Bargaining v. State Emp. Relations Bd.*, 54 Ohio St.3d 48, 51, 562 N.E.2d 125, 128 (1990); *State ex rel. Smith v. Frost*, 74 Ohio St.3d 107, 108, 656 N.E.2d 673, 676 (1995); *State ex rel. LTV Steel Co. v. Gwin*, 64 Ohio St.3d 245, 1992-Ohio-20, 594 N.E.2d 616.

In appropriate instances, interested parties are entitled to intervene in original actions. *See, e.g., State ex rel. Cooker Restaurant Corp. v. Montgomery County Bd. of Elec.*, 80 Ohio St.3d 302, 304, 1997-Ohio-315, 686 N.E.2d 238, 240; *State ex rel. Rootstown Loc. Sch. Dist. Bd. of Educ. v. Portage County Court of Common Pleas*, 78 Ohio St.3d 489, 490, 678 N.E.2d 1365, 1366 (1997). While prohibition actions are

brought solely against those who exercise judicial or *quasi-judicial* power, non-public individuals can still seek to join the proceedings when their rights are at stake. *Dept. of Admin. Servs.*, 54 Ohio St.3d at 51. As the court in *Schucker v. Metcalf*, 10th Dist. Franklin No. 84AP-548, 1984 WL 5986, *1-2 (Nov. 15, 1984), *rev'd on otr. grds.*, 22 Ohio St.3d 33, 488 N.E.2d 210 (1986), explained:

Prohibition is a civil action. Intervention, as described by Civ. R. 24, is not clearly inapplicable to prohibition since there is as much reason for persons who will be affected by a prohibition action to be represented in the action as in other civil actions. In fact, there may be more reason for intervention of affected persons in a prohibition action since the action is directed against a judge who may not have adequate legal representation.

Civ. R. 24(A) states that upon timely application a person shall be permitted to intervene in an action when the person claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the person's interest is adequately represented by existing parties. Specifically, Civ. R. 24(A) provides in relevant part that “[u]pon timely application anyone shall be permitted to intervene in an action. . . (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest. . . .” Permissive intervention is provided for under Civ. R. 24(B) where an applicant’s claim or defense and the main action have a common question in law or fact.

In *State v. Schulte*, 154 Ohio App.3d 367, 369, 2003-Ohio-3826, 797 N.E.2d 517 (1st Dist.), the court set forth the elements to support intervention:

Before a party may intervene, all of the following elements must be met: (1) the intervenor must claim an interest in the property or transaction that is the subject of the action; (2)

the intervenor's ability to protect that interest must, as a practical matter, be impaired or impeded; (3) the intervenor must show that the existing parties do not adequately represent his or her interest; and (4) the motion must be timely made. Civ.R. 24 requires that the application to intervene be timely made. What is timely depends on the facts of each case. Factors to consider are (1) how far the action has progressed, (2) the purpose of the intervention, (3) when the intervenor knew or should have known of his or her interest in the case, (4) the prejudice to the original parties caused by the failure to promptly intervene, and (5) any unusual circumstances favoring or disfavoring intervention. Motions to intervene filed after final judgments are disfavored. [footnotes omitted].

The *Schucker* court concluded that intervention in the prohibition action was appropriate, reasoning as follows:

The intervenors fully meet the requirements of Civ. R. 24(A)(2) for intervention of right. Their application to intervene was timely made and disposition of the prohibition action may practically impair their ability to protect their interest in the property or transactions which is the subject. For example, they would lose their interlocutory summary judgment since it would be a nullity if prohibition is granted. Respondent has not adequately represented their interests.

Id., 1984 W.L. 5986, *2.

All of the requirements for intervention have been satisfied in this instance. If Relators are granted a writ of prohibition, they will have succeeded in not only substantially delaying the underlying proceedings, but also in avoiding a visiting judge they believe will be unsympathetic to their cause. Rarely are litigants so brazen in their efforts to force an action into the courtroom of their choice, but this is such a case. It is therefore imperative that Respondents Hastings be allowed to intervene in these proceedings and protect their interests. It is inconceivable that their participation in this original action could prejudice any of the other parties.

CONCLUSION

In the interests of fairness and justice, intervening Respondent Hastings should be permitted to join these proceedings in accordance with Civ. R. 24. Their proposed Answer is attached.

Respectfully Submitted,

s/Michael F. Becker

Michael F. Becker, Esq. (#0008298)
THE BECKER LAW FIRM, L.P.A.

s/Paul W. Flowers

Paul W. Flowers, Esq., (#0046625)
PAUL W. FLOWERS CO. L.P.A.

s/Pamela Pantages

Pamela Pantages, Esq. (#0046840)
THE BECKER LAW FIRM, L.P.A.

*Attorneys for Respondents,
Austin Hastings, et al.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Motion** has been sent by e-mail on this 18th day of March, 2015 to:

Anna Moore Carulas, Esq. (0037161)
Douglas G. Leak, Esq. (0045554)
ROETZEL & ANDRESS, LPA
1375 East 9th Street, 9th Floor
Cleveland, Ohio 44114
acarulas@ralaw.com
dleak@ralaw.com

Attorneys for Relators

Timothy J. McGinty, Esq.
Charles E. Hannan, Esq.
The Justice Center, Courts Tower,
8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
channan@prosectuor.cuyahogacounty.us

*Attorneys for Respondents,
Hon. Brian J. Corrigan, and Hon. John J.
Russo*

s/Paul W. Flowers

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Respondents.

ON APPEAL FROM THE CUYAHOGA COUNTY
COURT OF COMMON PLEAS CASE NO. CV-12-785788

RESPONDENTS AUSTIN, MICHELLE, AND BRIAN HASTINGS'
ANSWER

Michael F. Becker, Esq. (#0008298)
Pamela Pantages, Esq. (#0046840)
THE BECKER LAW FIRM, L.P.A.
134 Middle Avenue
Elyria, Ohio 44030
(440) 323-7070
FAX: (440) 323-1879
mbecker@beckerlawlpa.com

Paul W. Flowers, Esq. (#0046625)
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*Attorneys for Respondents,
Hon. Brian J. Corrigan and Hon. John
J. Russo*

Respondents, Austin, Michelle, and Brian Hastings, submit this Answer to the Complaint for Writ of Prohibition and Alternative Writ dated February 2, 2015 and state as follows:

PARTIES

1. Respondents admit the allegations of Paragraph 1 of the Complaint.
2. Respondents admit the allegations of Paragraph 2 of the Complaint.
3. Respondents admit the allegations of Paragraph 3 of the Complaint.

JURISDICTION

4. In response to Paragraph 4 of the Complaint, Respondents adopt by reference all of the previous allegations and denials.

5. Paragraph 5 of the Complaint states a legal conclusion for which no response is required. These allegations are otherwise denied.

6. Respondents can neither admit nor deny the allegations contained in Paragraph 6 of the Complaint. These allegations are otherwise denied.

7. Respondents can neither admit nor deny the allegations contained in Paragraph 7 of the Complaint. These allegations are otherwise denied.

8. Respondents admit the allegations of Paragraph 8 of the Complaint.

9. Respondents admit the allegations of Paragraph 9 of the Complaint.

10. Respondents admit the allegations of Paragraph 10 of the Complaint.

STATEMENT OF FACTS

11. In response to Paragraph 11 of the Complaint, Respondents adopt by reference all of the previous allegations and denials.

12. Respondents admit the allegations of Paragraph 12 of the Complaint.

13. Respondents admit the allegations of Paragraph 13 of the Complaint.

14. Respondents admit the allegations of Paragraph 14 of the Complaint.

15. Respondents admit the allegations of Paragraph 15 of the Complaint.

16. Respondents admit the allegations of Paragraph 16 of the Complaint.

17. Respondents admit the allegations of Paragraph 17 of the Complaint.

18. In response to Paragraph 18 of the Complaint, Respondents admit that e-mail messages and other communications were exchanged between the parties, the terms of which speak for themselves. These allegations are otherwise denied.

19. In response to Paragraph 19 of the Complaint, Respondents admit that e-mail messages and other communications were exchanged between the parties, the terms of which speak for themselves. These allegations are otherwise denied.

20. In response to Paragraph 20 of the Complaint, Respondents admit that e-mail messages and other communications were exchanged between the parties, the terms of which speak for themselves. These allegations are otherwise denied.

21. In response to Paragraph 21 of the Complaint, Respondents admit that e-mail messages and other communications were exchanged between the parties, the terms of which speak for themselves. These allegations are otherwise denied.

22. In response to Paragraph 22 of the Complaint, Respondents admit that e-mail messages and other communications were exchanged between the parties, the terms of which speak for themselves. These allegations are otherwise denied.

23. In response to Paragraph 23 of the Complaint, Respondents admit that e-mail messages and other communications were exchanged between the parties, the terms of which speak for themselves. These allegations are otherwise denied.

24. In Response to Paragraph 24 of the Complaint, Respondents admit that various conversations and communications were conducted as detailed in their counsel's Response to Affidavit of Disqualification that was filed in Sup. Ct. Case No. 15

AP 008. These allegations are otherwise denied.

25. In Response to Paragraph 25 of the Complaint, Respondents admit that various conversations and communications were conducted as detailed in their counsel's Response to Affidavit of Disqualification that was filed in Sup. Ct. Case No. 15

AP 008. These allegations are otherwise denied.

26. In Response to Paragraph 26 of the Complaint, Respondents admit that various conversations and communications were conducted as detailed in their counsel's Response to Affidavit of Disqualification that was filed in Sup. Ct. Case No. 15

AP 008. These allegations are otherwise denied.

27. Respondents admit the allegations of Paragraph 27 of the Complaint.

28. Respondents admit the allegations of Paragraph 28 of the Complaint.

29. Respondents admit the allegations of Paragraph 29 of the Complaint.

COUNT ONE: WRIT OF PROHIBITION

30. In response to Paragraph 30 of the Complaint, Respondents adopt by reference all of the previous allegations and denials.

31. Respondents deny the allegation set forth in Paragraph 31 of the Complaint.

32. Paragraph 32 of the Complaint states a legal conclusion for which no response is required. These allegations are otherwise denied.

33. Respondents deny the allegation set forth in Paragraph 33 of the Complaint.

34. Paragraph 34 of the Complaint states a legal conclusion for which no response is required. These allegations are otherwise denied.

35. Paragraph 35 of the Complaint states a legal conclusion for which no response is required. These allegations are otherwise denied.

36. Respondents deny the allegation set forth in Paragraph 36 of the Complaint.

37. Respondents deny the allegation set forth in Paragraph 37 of the Complaint.

38. Respondents deny the allegation set forth in Paragraph 38 of the Complaint.

39. Respondents deny the allegation set forth in Paragraph 39 of the Complaint.

40. Respondents deny the allegation set forth in Paragraph 40 of the Complaint.

41. Respondents deny the allegation set forth in Paragraph 41 of the Complaint.

42. Respondents deny the allegation set forth in Paragraph 42 of the Complaint.

43. Respondents deny the allegation set forth in Paragraph 43 of the Complaint.

44. Respondents deny the allegation set forth in Paragraph 44 of the Complaint.

45. Respondents deny the allegation set forth in Paragraph 45 of the Complaint.

COUNT TWO: ALTERNATIVE WRIT

46. In response to Paragraph 46 of the Complaint, Respondents adopt by reference all of the previous allegations and denials.

47. Respondents deny the allegation set forth in Paragraph 47 of the Complaint.

48. Respondents deny the allegation set forth in Paragraph 48 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

49. The Complaint fails to state a potentially valid claim for relief.

SECOND AFFIRMATIVE DEFENSE

50. The extraordinary remedy of prohibition is unavailable to Relator since alternative avenues of relief at law can be pursued.

THIRD AFFIRMATIVE DEFENSE

51. Relators have failed to establish a clear legal right to the relief requested.

FOURTH AFFIRMATIVE DEFENSE

52. Relators have failed to join necessary and indispensable parties to this action.

FIFTH AFFIRMATIVE DEFENSE

53. Prohibition is unavailable to Relators as a result of their own failure to comply with legal requirements, inequitable conduct, and unclean hands.

SIXTH AFFIRMATIVE DEFENSE

54. Relators' claims are barred by the doctrine of *laches*.

SEVENTH AFFIRMATIVE DEFENSE

55. Respondents adopt by reference the affirmative defenses, to the extent applicable, that have been raised by the co-Respondents in this action.

EIGHTH AFFIRMATIVE DEFENSE

56. Respondents reserve the right to raise additional affirmative defenses as investigation of this matter continues.

PRAYER

WHEREFORE, Respondents, Austin Michelle, and Brian Hastings, request that this Court promptly dismiss Relators' Complaint without further delay and tax costs to Relators.

Respectfully Submitted,

s/Michael F. Becker

Michael F. Becker, Esq. (#0008298)
THE BECKER LAW FIRM, L.P.A.

s/Paul W. Flowers

Paul W. Flowers, Esq., (#0046625)
PAUL W. FLOWERS CO. L.P.A.

s/Pamela Pantages

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THE BECKER LAW FIRM, L.P.A.

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I hereby certify that a copy of the foregoing **Answer** has been sent by e-mail on this ____ day of _____, 2015 to:

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1375 East 9th Street, 9th Floor
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