

No. 2015-0604

IN THE SUPREME COURT OF OHIO

ORIGINAL ACTION FOR WRIT OF PROHIBITION

STATE ex rel. CHESTER TOWNSHIP, ET AL.,

Relators,

v.

THE HONORABLE TIMOTHY J. GRENDELL, JUDGE
Geauga County Court of Common Pleas, Probate Division

Respondent.

**BRIEF OF AMICUS CURIAE CHESTER TOWNSHIP PARK
DISTRICT IN SUPPORT OF RESPONDENT THE HONORABLE
TIMOTHY J. GRENDELL AND URGING DENIAL OF THE WRIT**

TODD M. RASKIN (0003625)
FRANK H. SCIALDONE * (0075179)
* *Counsel of Record*
Mazanec, Raskin, & Ryder Co., L.P.A.
100 Franklin's Row
34305 Solon Road
Cleveland, Ohio 44139
(440) 248-7906
(440) 248-8861 (Fax)
Email: traskin@mrrlaw.com
fscialdone@mrrlaw.com

*Counsel for Relators Chester Township and
The Chester Township Board of Trustees,
Michael J. Petruziello, Bud Kinney, and Ken
Radtko, Jr.*

STEPHEN W. FUNK* (0058506)
**Counsel of Record*
Roetzel & Andress, LPA
222 S. Main Street, Suite 400
Akron, Ohio 44308
(330) 376-2700
(330) 376-4577 (Fax)
Email: sfunk@ralaw.com

*Counsel for Respondent The Honorable
Timothy J. Gendell, Judge, Geauga County
Court of Common Pleas, Probate Division*

QUESTIONS PRESENTED FOR REVIEW

- (1) Whether the Probate Court has statutory and plenary jurisdictional authority under R.C. Chapter 1545 and R.C. 2101.24(C) over a township park district created by judicial order at the request of the township Trustees?
- (2) Whether the Probate Court has inherent jurisdiction over Relators when their actions relate to the court-created Park District?
- (3) Whether the Probate Court has statutory authority to hold the original applicant, Chester Township, and the created entity, Chester Township Park District, responsible for a percentage of the Master Commissioner's fees?
- (4) Whether a writ of prohibition is an appropriate remedy when Relators have already filed an appeal (which was dismissed for lack of a final appealable order)?

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STATEMENT OF FACTS AND PROCEEDINGS BELOW

On April 2, 1984, the Chester Township Trustees applied to Geauga County Probate Court to create a park district in the township. Joint Evid. 11. On May 10, 1984, Judge Frank Lavrich granted that application under case number 84 PC 139 and created the Chester Township Park District (“Park District”). Joint Evid. 16. Since the creation of the Park District, this case has been open and the Geauga County Probate Court (“Probate Court”) has exercised its authority over the Park District, including appointing and removing commissioners. Joint Evid. 1. In 2002, Chester Township (“Township”) eliminated the dedicated millage funding which had previously been allotted to the Park District under R.C. 1545.20. Judgment Entry of November 26, 2014, Joint Evid. at 105.

In March of 2014, an anonymous individual submitted a complaint to the Chester Township Board of Trustees and the Probate Court, which alleged that the Park District was not operating in accordance with the original judgment entry of May 10, 1984, its bylaws, and relevant Ohio law.

The Probate Court appointed Mary Jane Trapp, an attorney and former appellate judge, to serve as a Master Commissioner in the matter. The Master Commissioner prepared a report, which she presented to the Court. Id. at 103.

On November 26, 2014, the Probate Court issued a Judgment Entry, which directed the Master Commissioner to meet with the Township and Park District to address the report, the original allegations, and to address related issues, such as the Park District’s 2015 funding and an apparent conflict between the agreement of the Township and Park District and the Probate Court’s original 1984 order. Id. This portion of the November 26, 2014 entry stated in part:

The Master Commissioner is directed to meet with the Township Trustees and Park District Commissioners to formulate an agreement that is consistent with and not in conflict with the authority of the Park District under O.R.C. 1545 and the initial Township application and judicial documentation forming the Park District.

Id. at 108.

The entry further stated that the Court would assess 75% of the costs of the Master Commissioner to the Township and the Park District. Id. at 109. The entry did not set any exact figure of costs, because the final total had not yet been determined.

On December 12, 2014, Relators filed a Notice of Appeal to the Eleventh District Court of Appeals. Joint Evid. at 111. Relators also filed a motion to stay the entry pending appeal. Joint Evid. at 115. This motion was denied, as the Probate Court found that the November 26 entry was not a final appealable order. Joint Evid. at 132. The Probate Court also noted that “several actions and decisions remain pending by the Master Commissioner....” Id. On March 31, 2015, the Eleventh District Court of Appeals dismissed the appeal for lack of a final appealable order. *In re Chester Township Park District*, 2015-Ohio-1210; Joint Evid. at 139.

After their appeal was dismissed, Relators filed a complaint in prohibition with this Court on April 15, 2015. Complaint in Prohibition of April 15, 2015. By a 4-3 decision, this Court granted an alternative writ and set a schedule for the submission of merits briefs on May 12, 2015.

This Court has original jurisdiction over this matter under S.Ct.Prac.R. 12.05 and Article IV, Section 2(B)(1) of the Ohio Constitution.

INTEREST OF AMICUS CURIAE

Amicus Chester Township Park District respectfully submits this brief to the Court in support of Respondent and to urge denial of the writ.

Amicus Chester Township Park District (“Park District”) is an independent political body created on May 10, 1984, which is run by a Board of Commissioners. Relators’ actions toward the Park District and Respondent’s actions in response are at issue in this proceeding. The Park District has a significant financial interest in this matter, as the actions challenged by Relators were undertaken in response to Relators’ deprivation of the Park District of the dedicated independent millage levy which previously funded Park District. The challenged actions were also taken to prevent potential interference with the Park District’s autonomy and with the authority of the Park District’s Commissioners to operate the Park District without interference from Relators. An adverse ruling will significantly reduce the ability of the park commissioners to perform their statutory duties and abide by the Probate Court’s original judgment entry creating the Park District. Additionally, amicus has a substantial interest in the protection of the authority of probate courts under R.C. 2101.32 to tax the costs of a master commissioner in this case. A ruling in favor of Relators could harm amicus by setting a precedent that the costs of a master commissioner may not be assessed to parties who overstep their statutory authority and instead must be paid by an innocent party, such as amicus in the present case.

The above listed amicus curiae submits this brief respectfully urging this Court to rule in favor of Respondent and deny the writ of prohibition requested by Relators.

SUMMARY OF ARGUMENT

The creation of a township park district under R.C. Chapter 1545 grants probate courts ongoing jurisdiction over that park district. Relators' claim that the power of the Probate Court over the Park District is "limited to the appointment and removal of park commissioners" is incorrect. Probate courts have ongoing jurisdiction over court-created township park districts, as demonstrated by (1) the various ongoing powers allocated to probate courts under R.C. Chapter 1545 (such as creating or dissolving park districts, appointing or removing commissioners, approving donations, and approving the sale of park district property); (2) the plenary powers of probate courts over such actions; and (3) the inherent authority of probate courts to enforce their prior orders. This ongoing jurisdiction creates a concurrent obligation that probate courts enforce their orders forming park districts, oversee the commissioners of park districts, and monitor the operation of such districts.

Statutory provisions also grant probate courts exclusive jurisdiction over park districts created under R.C. Chapter 1545. Respondent was empowered to act by these provisions of the Revised Code. Further, probate courts possess plenary power over park districts. R.C. 2101.24(C). Further, since the Probate Court has general subject-matter jurisdiction, it "can determine its own jurisdiction, and a party challenging the court's jurisdiction possesses an adequate remedy by appeal." *State ex rel. White v. Junkin*. When necessary, probate courts are authorized to appoint a master commissioner to investigate a situation and report to the court. R.C. 2101.06. In these instances, probate courts are authorized to tax the costs of the master commissioner onto the parties. R.C. 2101.32. Relators are the initial originating parties and remain parties to this case. Additionally, probate courts' decisions on taxing costs are subject to the discretion of that court. *State ex rel. Estate of Hards v. Klammer*.

Conversely, Relators were not authorized by statute to eliminate the dedicated millage funding of the Park District. In eliminating that funding, Relators interfered with the operation of the Park District. Probate courts may take reasonable actions to protect the interests of the park districts they create, and probate courts are authorized to provide “any relief required to fully adjudicate the subject matter.” *Bishop v. Bishop*. Even if Relators somehow ceased to be parties at some point in the past, it is clear that the Probate Court has jurisdiction to direct the Master Commissioner to work with Relators and the Park District to prevent violation of statutory provisions. Bodies such as townships are not authorized to expand their jurisdiction beyond statutory limits. *Davis v. State ex rel. Kennedy*; *Penn Central Transportation Co. v. Public Utilities Commission*. The Probate Court has jurisdiction over Relators when their actions relate to or directly affect the Park District, or when they otherwise interfere with the Probate Court’s order creating the Park District.

A writ of prohibition is an extraordinary remedy which is not “routinely or easily granted.” *Junkin*; *State ex rel. Barclays Bank PLC v. Hamilton Cty. Court of Common Pleas*. Relators must demonstrate a compelling necessity for such a writ by showing that Respondent’s exercise of judicial authority is “patently and unambiguously” unauthorized by law and that no other adequate remedy exists. *State ex rel. Brady v. Pianka*. This Relators cannot do, as Respondent has clear statutory, plenary, and inherent jurisdiction over Relators’ actions involving the Park District. Probate courts have statutory authority over park districts that Relators lack, and probate courts further have the inherent authority to enforce their own orders. *Nies v. Fritzsich Custom Builders, L.L.C.* Additionally, if Relators believe that the Probate Court has erred in the exercise of its jurisdiction, Relators will have an adequate remedy by appeal available once a final order is issued. *State ex rel. West v. McDonnell*; *State ex rel. Obojski v.*

Perciak. Therefore, a writ of prohibition is not an appropriate remedy, and would have a strong negative impact on probate court jurisdiction throughout Ohio. For these reasons, this Court should deny Relators' request.

ARGUMENTS

I. THE PROBATE COURT HAS EXCLUSIVE AND ONGOING JURISDICTION OVER THE COURT-CREATED PARK DISTRICT.

Relators do not present this Court with an accurate view of (1) the statutory, plenary, and inherent jurisdictional authority of the Geauga County Probate Court, (2) the ongoing party status of the Township, and (3) the Probate Court's ability to assess master commissioner costs under R.C. 2101.07 and 2101.32. Contrary to the arguments asserted by Relators, the statutory authority of probate courts over court-created park districts is not limited simply to the powers of appointment and removal of park commissioners. General statutory grants of probate court power and jurisdiction are enumerated below.

A. Respondent has statutory jurisdiction over the Park District.

1. Statutory provisions grant probate courts exclusive subject matter jurisdiction over court-created park districts.

Probate courts have broad jurisdiction over park districts created under R.C. Chapter 1545. Moreover, R.C. 2101.24(A)(2) confers exclusive jurisdiction over matters not otherwise listed in R.C. 2101.24 upon probate courts when another section of the Revised Code gives the probate court jurisdiction over that subject matter and when no other section confers statutory jurisdiction over that subject matter upon another agency or court. R.C. 2101.24(A)(2). R.C. Chapter 1545 confers jurisdiction over court-created local park districts upon probate courts in several ways, which are addressed below. No statute confers jurisdiction over court-created park districts upon any other agency or court.

Further, "a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging the court's jurisdiction possesses an adequate remedy by

appeal.” *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 336, 686 N.E.2d 267 (1997); *State ex rel. Brady v. Pianka*, 106 Ohio St.3d 147, 2005-Ohio-4015, 832 N.E.2d 1202, ¶9. If Relators believe that the court is abusing its discretion by exercising its jurisdiction over them, they may appeal that decision once a final appealable order is issued.

2. Probate courts are granted broad powers over court-created park districts.

i. Probate courts have the power to create park districts and to appoint or remove commissioners.

Applications to create park districts are made to the probate court. R.C. 1545.02. The application to create the Chester Township Park District was filed by Chester Township by its then-trustees in accordance with this statutory requirement. Joint Evid., at 16. Further, probate courts are authorized to appoint or remove park district commissioners at the discretion of the court. R.C. 1545.05 and 1545.06. Since the creation of the Park District in question, that fact that Geauga County Probate Court judges have exercised this power through the ongoing case (84 PC 139) on many occasions is undisputed in the record.

ii. Probate courts have ongoing oversight powers over court-created park districts.

After a probate court creates a township park district under R.C. Chapter 1545, that probate court maintains its ongoing jurisdiction to appoint or remove park commissioners. R.C. 1545.05 and 1545.06. The probate court also has other ongoing oversight powers, such as the power to (a) approve donations to the park district, R.C. 1545.11; (b) approve the sale of property by the park district, R.C. 1545.12; and (c) dissolve the park district, R.C. 1545.35 and 1545.40. This oversight authority is continuous and cannot be usurped by another governmental entity or court.

iii. Probate courts have the authority to appoint a master commissioner and to assess the costs thereof.

Probate courts have the authority to appoint a master commissioner in any matter pending before the court to investigate the matter and report to the judge. R.C. 2101.06. Further, probate courts are directed that, “The court shall allow the commissioner those fees that are allowed to other officers for similar services, and the court shall tax those fees with the costs.” R.C. 2101.07. These fees are assessed to the parties to the case, in a similar manner to how the costs of a guardian ad litem in a custody case may be assessed to the parties. Probate courts clearly have the power to assess costs to parties in any matter before the court. R.C. 2101.32. Relators do not appear to challenge the taxing of the costs itself; instead, they separately challenge whether Respondent has jurisdiction to tax these costs to Relators as the initial party that applied to the Probate Court for the creation of the Park District, initiating the ongoing case.

In the case at bar, there is no question that the Probate Court had the authority to appoint the Master Commissioner. While Relators may choose to dismiss the Master Commissioner’s Report as “largely irrelevant” (a gross misrepresentation of Master Commissioner Trapp’s work), Relators may not dismiss the fact that Relators freely cooperated with the Master Commissioner, including providing information for the Report and commenting in writing on it, as even their own brief admits. Relators’ Merits Brief at 7. Relators never objected to the Master Commissioner until the November 26, 2014 Judgment Entry was issued. At that time, Relators filed an appeal to the Eleventh District Court of Appeals, demonstrating that Relators have an adequate remedy at law available for their disagreement with the Probate Court in this case.

B. Probate courts have plenary power over all parties involved in the matter of a court-created local park district.

1. Respondent is granted plenary jurisdictional authority by statute.

R.C. 2101.24(C) provides, “The probate court has plenary power at law and in equity to dispose fully of any matter that is properly before the court, unless the power is expressly otherwise limited or denied by a section of the Revised Code.” R.C. 2101.24(C). A grant of plenary power, such as the power of probate courts over park districts, is a significant authority. Ohio courts have been clear about a grant of plenary power: “Plenary power has a well-defined legal meaning and significance. It means full, entire, complete, absolute.” *Madigan v. Dollar Building & Loan Co.*, 52 Ohio App. 553, 563, 4 N.E.2d 68 (10th Dist. 1935). When the subject matter is properly before the probate court, that court need only determine “whether there is a statutory limitation on the exercise of the power of the Probate Court.” *Id.* at 563. This grant of plenary power “authorizes the probate court to grant any relief required to fully adjudicate the subject matter within the probate court's exclusive jurisdiction.” *Bishop v. Bishop*, 188 Ohio App. 3d 98, 2010-Ohio-2958, 934 N.E.2d 420, ¶12 (4th Dist.). Relators argue against Respondent’s application of the broad plenary powers granted to probate courts by R.C. 2101.24(C). However, probate courts are the only courts with statutory jurisdiction over Chapter 1545 park districts, and no other statute exists which gives jurisdiction over these park districts to any other agency or court.

Relators make much of *Corron v. Corron*, citing it more times than any other case in Relators’ merits brief, with the familiar quotation, “[I]t is a well-settled principle of law that probate courts are courts of limited jurisdiction and are permitted to exercise only the authority granted to them by statute and by the Ohio Constitution.” *Corron v. Corron*, 40 Ohio St.3d 75, 77, 531 N.E.2d 708 (1988). This argument ignores the plenary jurisdictional authority of probate

courts over park districts created by a probate court. It is clear that probate courts are granted authority over court-created local park districts both by R.C. Chapter 1545 and by the broad plenary jurisdiction granted under R.C. 2101.24(C). Thus, Relators miss the mark with their continued citation of *Corron*.

2. Relators bear the burden of demonstrating that this plenary power is expressly limited or denied by another statutory provision.

As both R.C. 2101.24(C) and *Madigan* make clear, unless there is a specific statutory limitation on the plenary power over Chapter 1545 park districts granted to probate courts, those courts may exercise that authority. Relators bear the burden of demonstrating that the power in question is expressly denied by another section of the Revised Code. Relators have never raised the claim that the matter was not properly before the probate court, nor can Relators do so. Instead, Relators have raised a claim that Respondent “patently and unambiguously” lacks jurisdiction over them. Relators’ Merits Brief of June 11, 2015, at 11. As established above, Relators can provide no accurate legal basis for such a claim. Even if Relators could claim that the matter was not properly before the court, the proper remedy for Relators to seek is an appeal, not a writ of prohibition. Since these powers are expressly granted to probate courts by Chapter 1545, Relators cannot argue that the Revised Code explicitly denies these powers.

C. Respondent has inherent and ongoing jurisdiction over the Park District.

1. Probate courts maintain ongoing oversight of court-created township park districts.

After a probate court creates a township park district under R.C. Chapter 1545, that probate court has ongoing jurisdiction to appoint park commissioners, R.C. 1545.05; remove park commissioners, R.C. 1545.06; approve donations to the park district, R.C. 1545.11; approve sales of property by the park district, R.C. 1545.12; or dissolve the park district, R.C.

1545.35. Thus, by statute, a probate court has ongoing jurisdiction over a court-created township park district. In particular, the ongoing jurisdiction of probate courts to remove commissioners carries with it a concurrent obligation that the Probate Court must monitor the commissioners and the ongoing operation of the Park District. Otherwise, removal of commissioners would be arbitrary and capricious. In the case at bar, Respondent appointed the Master Commissioner as part of this ongoing oversight to allow Respondent to make informed decisions about the use of that oversight and commissioner removal power. Probate courts also have inherent ongoing oversight powers to ensure that their prior entries are enforced, as further detailed below.

2. Relators are the original parties to the probate case which created the Park District, and they remain parties to the case.

- i. The case, which began at the application of the Township, has been continuously open to enable several probate judges to exercise their jurisdictional authority.**

The original application to create the Park District was filed by the Chester Township Trustees who preceded Relators. In Geauga County, the Probate Court maintains this jurisdiction to exercise its statutory responsibilities through an open case, case number 84 PC 139. While Relators are correct that upon approval of the application the park district becomes a separate legal entity, Relators' Merits Brief of June 11, 2015; this in and of itself does not mean that Relators are no longer parties in the action. Indeed, Relators may apply to the Probate Court in this same case to dissolve the Park District. R.C. 1545.35. Such an action would be initiated by Relators filing an application in this original case, 84 PC 139. Since Relators had the authority to apply for the creation of the Park District, beginning the case, and have the authority to seek to dissolve the Park District, which would close the case, Relators are inherently parties in this case. The original applicant was the Township, acting through its trustees (the predecessors of Relators), and Relators retain authority to act on behalf of the Township in this

matter. Therefore, the Probate Court's inherent subject matter jurisdiction extends to Relators' actions involving the court-created Park District.

Further, the actions of Relators toward the Park District have ensured that they remain parties. By affecting the funding of the Park District, Relators have exceeded their authority, and the Probate Court is well within its statutory authority to ensure that relevant statutory provisions are followed. It would be absurd to conclude that a governmental agency that acts toward a park district under the supervision of a probate court is immune from responsibility for its actions. Instead, probate courts can take reasonable actions to enforce their prior orders and protect the interests of the park districts for which they have ultimate responsibility under R.C. Chapter 1545. This is because the probate court is authorized to provide "any relief required to fully adjudicate the subject matter." *Bishop*, 188 Ohio App. 3d 98, 2010-Ohio-2958, 934 N.E.2d 420, ¶12 (4th Dist.). Even if this Court were to incorrectly find that Relators ceased to be parties at some indeterminate time in the past, it is clear that the Probate Court would have jurisdiction over them to prevent Relators from interfering with the Probate Court's prior order and the Probate Court's statutory oversight responsibility for the Park District. Moreover, in this case, the Probate Court did not order Relators to take some specific action. Rather, the Probate Court simply directed the Master Commissioner to "meet with the Township Trustees and Park District Commissioners to formulate an agreement that is consistent with" relevant statutes and orders. Joint Evid. at 108.

- ii. **Relators exceeded their statutory authority and interfered with the Probate Court's original order when they eliminated the dedicated funding for the Park District.**

Relators in their merits brief misrepresent the true issues before this Court. Relators present Respondent's actions as attempting to exercise jurisdiction "over the Relators-Chester

Township Trustees' funding and resources." Relators' Merits Brief of June 11, 2015, at 12. Later, Relators argue: "[T]he history of Ohio jurisprudence provides no support for a probate court to interject itself into the funding of the park district by invading the province of a separate public entity's finances." *Id.* at 14. Relators mischaracterize the Probate Court's order and misstate the true nature of Respondent's actions. The Probate Court did not order Relators to spend any particular amount. Rather, the Probate Court merely directed the Master Commissioner to meet with parties to address the funding and apparent conflict with R.C. Chapter 1545 and the original court order. This Court is not reviewing a case of a probate court attempting to control the finances of a township. Instead, this Court is reviewing a case of a township improperly availing itself of funding that was statutorily mandated to be used for the Park District.

In 2002, Relators unilaterally eliminated the dedicated millage funding for the Park District. *Joint Evid.* at 106. In doing so, Relators exceeded their statutory authority and violated R.C. 1545.20, which provides for park district commissioners to levy a tax of up to one-half mill upon the property within the district. R.C. 1545.20. The levy that Relators appropriated for the use of the Township is not a 'slush fund' that Relators may tap into whenever they desire to do so. It is dedicated funding for the purpose of funding of the park district. Relators are not entitled to help themselves to this funding. When they attempted to do so, they violated the original judgment entry and ensured that they subjected themselves to the jurisdiction of the Probate Court. As a result, the Probate Court provided the "relief required to fully adjudicate the subject matter." *Bishop*, 188 Ohio App. 3d 98, 2010-Ohio-2958, 934 N.E.2d 420, ¶12 (4th Dist.).

Relators lack the authority to extend their own jurisdiction over the Park District and to make use of the Park District's funds, as R.C. 1545.20 and 1545.21 do not grant this authority to them. Administrative or other governing bodies are restricted to the powers that are expressly granted to them. *See Davis v. State ex rel. Kennedy*, 127 Ohio St. 261, 187 N.E. 867 (1933); *Penn Central Transportation Co. v. Public Utilities Commission*, 35 Ohio St.2d 97, 298 N.E.2d 587 (1973). Curiously, Relators cite these cases in support of their claim that the Probate Court's jurisdiction is limited. Relators' Merits Brief of June 11, 2015, at 18. However, when properly understood, these cases demonstrate that it is Relators who lack the authority to control the Park District. Instead, the Probate Court has the statutory authority to exercise its jurisdiction over the Park District. When Relators exceeded their statutory authority, Respondent had no choice but to prevent such an incursion into the Probate Court's jurisdiction. While probate courts are clearly granted statutory authority over park districts, Relators are not.

3. Probate courts have inherent jurisdictional authority to enforce statutory provisions and prior court orders.

By finding that Relators had a duty to provide adequate funding for the Park District, the Probate Court was essentially finding that Relators had a duty to provide funding that was adequate under R.C. 1545.20. Since Relators improperly deprived the Park District of funding that it was entitled to under R.C. 1545.20, based on the Master Commissioner's report, the court found that Relators were to meet with the Master Commissioner to address the Park District's dedicated millage funding, to which the Park District is statutorily entitled. This ruling was part of the process of enforcing the statutory provisions governing park districts. It is unquestionable that courts have the duty to enforce relevant statutory provisions in matters before those courts. Further, this Court has held, "[T]he power of a court to enforce its own proper orders is fundamental and inherent.... without [this] power the judicial edifice would fall." *Record*

Publishing Co. v. Kainrad, 49 Ohio St.3d 296, 300, 551 N.E.2d 1286 (1990). Amicus asks this Court to allow probate courts to have the flexibility necessary to address problems when one entity violates statutes or prior court orders by finding that R.C. 1545.20 must be enforced. Any other ruling would handcuff probate courts that are seeking to ensure that laws and court orders are enforced, harming Chapter 1545 park districts created by those same probate courts.

II. RESPONDENT HAS THE STATUTORY AUTHORITY TO ASSESS THE COSTS OF THE MASTER COMMISSIONER TO RELATORS.

A. The exclusive subject matter jurisdiction of probate courts grants Respondent the authority to assess these costs to Relators.

1. The fees of a Master Commissioner may be assessed to all parties in a matter.

In addition to the authority to appoint a master commissioner, probate courts also possess the authority to tax the master commissioner's fees with the costs of the case. R.C. 2101.07. Relators do not appear to dispute that a Master Commissioner's fees may be assessed to all parties in a case, as it is clearly established by R.C. 2101.07 and 2101.32 that probate courts may assess court costs to one or both parties in a matter pending before that court. R.C. 2101.07 and 2101.32. Instead, despite having filed the application which initiated the case before the Probate Court, Relators argue that they are not within the jurisdiction of the Probate Court because Relators are somehow not parties to the matter. Therefore, the question is simply whether Relators are parties.

2. Relators are parties in this matter.

As established above, Relators are the initiating and original parties in this matter. Relators' predecessors filed the original application to create the Park District. Joint Evid. at 11. The Township's original party status grants the Township special rights and duties that would

not be possessed by a nonparty. For example, no nonparty is permitted to apply to a court to have a case terminated, as the Township is permitted through R.C. 1545.35, where it is permitted to apply to the Probate Court to dissolve the Park District. As the original, initiating party, the Township is still under the jurisdiction of the Probate Court when its actions relate to the Park District, which was created under the supervision of the Probate Court. The mere fact that another party, the Park District, was created does not mean that the Township is no longer a party to the case. It simply means that the original application made by the Township was granted, and an additional party to the case was created. However, the introduction of an additional party does not result in the elimination of other parties. Regardless of whether the Township intended to exercise their rights as a party in the future, the Township did not cease to be a party to the case.

Additionally, Relators have affected the rights and duties of what Relators admit is a separate legal and political entity. Relators' Merits Brief of June 11, 2015, at 4. Therefore, through their improper appropriation of the Park District's dedicated millage funding, Relators have exceeded their own statutory jurisdiction and subjected themselves to the jurisdiction of the entity overseeing the Park District, the Probate Court. Regardless of the length of time that has elapsed since the creation of the Park District, the original 1984 Judgment Entry creating the Park District has never, and will never, become unenforceable.

B. Even if the costs were only assessed to the Park District, the Township would still be indirectly responsible for most of the costs.

Based on the funding structure in place for the Park District since 2002, funding from the levy that is required by R.C. 1545.20 to go directly to the Park District is going to the Township, which then approves a budget for the Park District. Relators' Merits Brief of June 11, 2015, at 8. Accordingly, regardless of the course of action that is taken by this Court, the Township will

ultimately be responsible for providing the funds to pay the cost of the Master Commissioner, because the Township is funding the Park District after improperly appropriating the dedicated millage funding to which the Park District is legally entitled.

III. A WRIT OF PROHIBITION IS NOT AN APPROPRIATE REMEDY.

A. Writs of prohibition are extraordinary remedies.

Writs of prohibition are not “routinely or easily granted” by this Court. *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 336, 686 N.E.2d 267 (1997); *State ex rel. Barclays Bank PLC v. Hamilton Cty. Court of Common Pleas*, 74 Ohio St. 3d 536, 660 N.E.2d 458 (1996). In order to be entitled to a writ of prohibition, Relators must demonstrate (1) that Respondent is about to exercise judicial or quasi-judicial power, (2) that this exercise of power is unauthorized by law, and (3) that no other adequate remedy at law exists. *State ex rel. Brady v. Pianka*, 106 Ohio St.3d 147, 2005-Ohio-4015, 832 N.E.2d 1202, ¶7. In the case at bar, there is little doubt that Respondent is about to exercise judicial power. Thus, two questions remain: whether that exercise is authorized by law and whether another adequate remedy exists.

Writs of prohibition are not to be granted lightly, and amicus asks this Court to refuse to grant a writ that would prevent a probate court from using its statutory, plenary, and inherent jurisdictional authority to enforce both its prior orders and statutory provisions. Granting the requested writ would set an extremely dangerous precedent that probate courts can be prohibited from enforcing prior probate court orders and statutory provisions. Such a ruling would invite a plethora of writ filings with this Court, especially by disgruntled parties whose premature appeals are dismissed for lack of a final appealable order.

B. The exercise of judicial power over Relators is authorized by law.

1. Respondent has statutory jurisdiction over Relators' actions toward the Park District.

Probate courts have exclusive jurisdiction over park districts created under R.C. Chapter 1545, as R.C. 2101.24(A)(2) makes clear. Probate courts also have plenary power to dispose fully of any matter that is properly before the court. R.C. 2101.24(C). However, as established above, Relators lack authority to eliminate the Park District's dedicated funds. Since the matter of the Park District was properly before the court, Respondent has the authority to exercise judicial power to prevent Relators' statutorily unauthorized actions. A ruling in favor of Relators would allow townships to exercise statutorily unauthorized powers over park districts controlled by probate courts, and would run contrary to this Court's precedent that administrative bodies are not permitted to exercise powers beyond those powers which have been granted to them by statute. *See Davis*, 127 Ohio St. 261, 187 N.E. 867 (1933); *Penn Central*, 35 Ohio St.2d 97, 298 N.E.2d 587 (1973).

2. Probate courts have inherent authority to enforce their own prior orders.

Probate courts, like other trial courts, have inherent authority to enforce their own orders. *Nies v. Fritsch Custom Builders, L.L.C.*, 186 Ohio App.3d 35, 2010-Ohio-357, 926 N.E.2d 341, ¶41. Even if no statutory provisions had been present to restrict the actions of Relators, Relators were bound by Judge Lavrich's original judgment entry forming the Park District. Probate courts must be permitted to enforce their own prior orders, and the November 26, 2014 entry was part of the process of enforcing the original order. By seeking a writ of prohibition before any final order is issued, Relators seek to prevent enforcement of Judge Lavrich's original order. This Court should decline to take such an action.

3. Probate courts have statutory authority to assess a master commissioner's fees.

Probate courts have the authority to assess fees and court costs to one party or both parties in a case, including the fees of a court-appointed master commissioner. The master commissioner's fees are assessed to the parties to the case, in a similar manner to how the costs of a guardian ad litem in a custody case may be assessed to both parties. Probate courts clearly have the power to assess costs to parties in any matter before the court. R.C. 2101.32. Exactly how these costs will be assessed is up to the discretion of each individual probate court, as this Court has found that "the [probate] court has discretion as to how the costs of an action shall be assessed." *State ex rel. Estate of Hards v. Klammer*, 110 Ohio St.3d 104, 2006-Ohio-3670, 850 N.E.2d 1197, ¶ 14. The exact amount to be assessed will be determined by the Probate Court when it receives the final invoice from the Master Commissioner and issues a final order requiring payment of that fee.

C. By filing an appeal, Relators' own actions admit that they possess an adequate remedy at law.

1. Relators have appealed, thereby demonstrating the availability of an adequate remedy at law.

Claims of error in the exercise of jurisdiction are not the same as claims of error due to lack of jurisdiction. Relators claim repeatedly that Respondent lacks jurisdiction over them. *See, e.g.*, Relators' Merits Brief of June 11, 2015, 10. This claim is inaccurate, as demonstrated above. If Relators instead believe that the Probate Court has erred in the exercise of its jurisdiction, then once a final order is issued, Relators will possess an adequate remedy by appeal. *State ex rel. West v. McDonnell*, 139 Ohio St.3d 115, 2014-Ohio-1562, 9 N.E.3d 1025, ¶24; *State ex rel. Obojski v. Perciak*, 113 Ohio St.3d 486, 2007-Ohio-2453, 866 N.E.2d 1070, ¶22. Because the only claim available to Relators is that the Probate Court erred in the exercise

of its jurisdiction, this Court should dismiss the Relators' request for a writ of prohibition, as Relators will have an adequate remedy for this claim by appeal once a final order is issued.

The very fact that Relators have appealed to the Eleventh District demonstrates the availability of an adequate remedy at law. Once the final order in this matter is issued, Relators will be able to appeal the issue or issues on which they believe the Probate Court erred. Until that time, however, this Court should not grant Relators the writ of prohibition they seek, because an adequate remedy at law will exist once an order that will affect their rights, duties, or privileges comes into effect.

2. Relators' appeal was not dismissed on the merits, so Relators retain an adequate remedy at law.

The Eleventh District Court of Appeals dismissed Relators' appeal because it is premature, and that court never ruled on the merits of the case. As a result, Relators still maintain their right of appeal once a final appealable order is issued. The mere fact that their appeal has been dismissed for lack of a final appealable order does not mean that Relators are without an adequate remedy at law. The mere fact that Relators will be required to wait for a final order to be issued does not entitle them to this extraordinary writ. *Compare, e.g. Klammer*, 110 Ohio St.3d 104, 2006-Ohio-3670, 850 N.E.2d 1197, ¶ 15 (finding that the fact that an appeal is no longer available due to failure to timely appeal does not entitle an individual to a writ of prohibition).

In fact, since Relators do not face a final appealable order, a writ of prohibition is extremely inappropriate in this case. Instead, once a final order is issued, Relators will be able to file an appeal on any error they believe was made by the Probate Court. Until that time, Relators face no court order requiring them to take any particular action. They have an adequate remedy by appeal under *West* and *Obojski*.

CONCLUSION

Relators have failed to prove that Respondent patently and unambiguously lacks jurisdiction in this matter. The Probate Court which formed the Park District at the Township's application and has maintained oversight in accordance with the powers granted by R.C. Chapter 1545 has subject matter jurisdiction. Respondent should prevail on the merits of this case, and this Court should refuse to grant Relators the writ of prohibition. Probate courts have statutory jurisdiction, plenary power, and inherent and ongoing jurisdiction over park districts. Relators are parties to this matter, and have been parties since making the original application to the Probate Court to create the Park District. Even if Relators ceased to be parties to the matter at some unidentified point in the past, Relators' actions are sufficient to bring them once again under the jurisdiction of the Probate Court. Because Relators exceeded their authority by eliminating the dedicated millage funding, violating both statutory provisions and the original judgment entry, the Probate Court had the authority to act with regard to Relators' actions toward the Park District. As a result, Respondent acted to provide the "relief required to fully adjudicate the subject matter" under *Bishop*. Since Relators were under the proper jurisdiction of the Probate Court, Respondent was within his statutory authority to tax the costs of the Master Commissioner to Relators. This Court should recognize, as it has in the past, that probate courts "[have] discretion as to how the costs of an action shall be assessed." *Klammer*, 110 Ohio St.3d 104, 2006-Ohio-3670, 850 N.E.2d 1197, ¶ 14.

This Court should not grant Relators the extraordinary remedy that is a writ of prohibition. Such a ruling would create bad law and invite unwarranted filings of such writs. Respondent clearly has authority to exercise judicial power in this manner, so the writ is clearly inappropriate. Additionally, Relators will have an adequate remedy by appeal if they believe

that the Probate Court has erred in the exercise of its jurisdiction after a final appealable order is issued.

For these reasons, amicus Chester Township Park District respectfully asks this Court to deny Relators' request for a writ of prohibition and dismiss their action.

Respectfully Submitted,

/s James Gillette

James Gillette (0015995)
(COUNSEL OF RECORD)
CITY OF CHARDON
117 South Street, Suite 208
Chardon, Ohio 44024
(440) 286-2669
(440) 286-1207 (Fax)

*Counsel of Record for Amicus Chester Township Park
District*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief of Amicus Curiae Chester Township Park District was served by electronic mail on this 30th day of June, 2015, upon the following counsel:

TODD M. RASKIN (0003625)
FRANK H. SCIALDONE* (0075179)
* *Counsel of Record*
Manzanec, Raskin, & Ryder Co., L.P.A.
100 Franklin's Row
34305 Solon Road
Cleveland, Ohio 44139
(440) 248-7906
(440) 248-8861 (Fax)
Email: traskin@mrrlaw.com
fscialdone@mrrlaw.com

*Counsel for Relators Chester Township and
The Chester Township Board of Trustees,
Michael J. Petruziello, Bud Kinney, and Ken
Radtke, Jr.*

STEPHEN W. FUNK* (0058506)
* *Counsel of Record*
Roetzel & Andress, LPA
222 S. Main Street, Suite 400
Akron, Ohio 44308
(330) 376-2700
(330) 376-4577 (Fax)
Email: sfunk@ralaw.com

*Counsel for Respondent The Honorable
Timothy J. Grendell, Judge, Geauga County
Court of Common Pleas, Probate Division*

/s James Gillette

James Gillette (0015995)
Counsel for Amicus Curiae