

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. GRENDALL, JUDGE
GEAUGA COUNTY COURT OF COMMON PLEAS, PROBATE DIVISION**

Respondent.

MERIT BRIEF OF RESPONDENT

**THE HONORABLE TIMOTHY J. GRENDALL, JUDGE
GEAUGA COUNTY COURT OF COMMON PLEAS, PROBATE DIVISION**

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
Telephone: 440.248.7906
Facsimile: 440.248.8861
E-Mail: 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
Telephone: 330.376.2700
Facsimile: 330.376.4577
E-Mail: sfunk@ralaw.com

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

William J. Seitz, III* (0011745)
Bryan E. Pacheco (0068189)
**Counsel of Record*
Dinsmore & Shohl, LLP
255 E. Fifth Street, Suite 1900
Cincinnati, Ohio 45202
Telephone: 513.977.8303
Facsimile: 513.977.8141
E-Mail: william.seitz@dinsmore.com

*Counsel of Record for Amici
Ohio Probate Court Judges*

James Gillette* (0015995)
**Counsel of Record*
City of Chardon
117 South Street, Suite 208
Chardon, Ohio 44024
Telephone: 440.286.2669
Facsimile: 440.286.1206
E-Mail: jimgillette49@aol.com

*Counsel of Record for Amicus
Chester Township Park District*

TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF FACTS 4

 A. The Creation of the Chester Township Park District 4

 B. The Probate Court’s Appointment of a Special Master Commissioner 6

 C. The Master Commissioner’s Report, dated July 28, 2014 7

 D. The Trustees’ Comments on the Master Commissioner’s Report..... 10

 E. The Probate Court’s Judgment Entry, dated November 26, 2014 11

 F. The Township’s Appeal to the Eleventh District Court of Appeals 15

LAW AND ARGUMENT 18

I. Proposition of Law #1: A Writ of Prohibition Should Not Be Granted Unless
The Relators Can Satisfy Their Heavy Burden To Establish That the Probate
Court Patently and Unambiguously Lacks Subject Matter Jurisdiction Over The
Underlying Case 18

II. Proposition of Law #2: The Probate Court Has The Statutory Authority To
Appoint The Special Master Commissioner To Investigate The Chester
Township Park District And The Inherent Authority to Enforce Its Prior
Judgment Entry..... 23

III. Proposition of Law #3: The Probate Court Has Broad Discretion To Decide
How To Assess The Costs Associated With The Appointment Of A Master
Commissioner..... 28

CONCLUSION 30

PROOF OF SERVICE

TABLE OF AUTHORITIES

Cases

Bank of America, N.A. v. Kuchta, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040..... 18, 19, 20

Corron v. Corron, 40 Ohio St.3d 75, 531 N.E.2d 708 (1988)..... 23, 24

Hale v. Smith, 55 Ohio St. 210 (1896) 17

In re Cletus P. McCauley and Mary McAuley, Irrevocable Trust, 5th Dist. Stark No. 2013 CA00237, 2014-Ohio-348924

In re Ewanicky, 8th Dist. Cuyahoga No. 81742, 2013-Ohio-335124

In re Guardianship of Spangler, 126 Ohio St.3d 339, 2010-Ohio-2471, 933 N.E.2d 106726

In the Matter of Chester Twp. Park Dist., 11th App. Geauga No. 2014-G-3242, 2015-Ohio-1210 3, 17, 23

Johnson v. Allen, 101 Ohio App.3d 181, 655 N.E.2d 240 (8th Dist. 1995).....24

Lingo v. State of Ohio, 138 Ohio St.3d 427, 2014-Ohio-1052, 7 N.E.2d 1188 1, 19, 22, 28

Madey v. Madey, 11th Dist. No. 861, 1979 WL 208079 (Apr. 16, 1979).....29

Nies v. Fritzsich Custom Builders, L.L.C., 186 Ohio App.3d 35, 2010-Ohio-357, 926 N.E.2d 341 (1st Dist. 2010).....27

Pergande v. Pergande, 11th Dist. App. No. 90-A-1497 (Apr. 26, 1991) 17

Record Publishing Co. v. Kainrad, 49 Ohio St.3d 296, 551 N.E.2d 1286 (1990) 17, 26, 27

State ex rel. Bryant v. Akron Metropolitan Park Dist., 120 Ohio St. 464, 166 N.E.2d 407 (1929).....5

State ex rel. Doe v. Capper, 132 Ohio St.3d 365, 2012-Ohio-2686, 972 N.E.2d 553.....20

State ex rel. Eaton Corp. v. Lancaster, 40 Ohio St.3d 404, 534 N.E.2d 46 (1988) 18

State ex rel. Enyart v. O’Neill, 71 Ohio St.3d 655, 646 N.E.2d 1110 (1995)..... 19

State ex rel. Estate of Hards v. Klammer, 110 Ohio St.3d 104, 2006-Ohio-3670, 850 N.E.2d 1197.....3, 29

<i>State ex rel. Fant v. Reg. Transit Auth.</i> , 48 Ohio St.3d 39, 548 N.E.2d 240 (1990)	29
<i>State ex rel. Godale v. Geauga Cty. Court of Common Pleas</i> , 166 Ohio App.3d 851, N.E.2d 708 (11 th Dist. 2006)	27
<i>State ex rel. Heimann v. George</i> , 45 Ohio St.2d 231, 344 N.E.2d 130 (1976)	22
<i>State ex rel. Henderson v. Sweeney</i> , 8 th Dist. Cuyahoga App. No. 102784, 2015-Ohio-2282	20
<i>State ex rel. Huntington National Bank v. Kontos</i> , 11 th Dist. Trumbull No. 2013-T-0089, 2014-Ohio-1374	23
<i>State ex rel. Leatherworks Partnership v. Stuard</i> , 11 th Dist. Trumbull No. 2002-T-0017, 2002-Ohio-6477, 2002 WL 3163530	19
<i>State ex rel. Lewis v. Moser</i> , 72 Ohio St.3d 25, 647 N.E.2d 155 (1995)	24
<i>State ex rel. Miller v. Lake County Court of Common Pleas</i> , 151 Ohio St. 397, 86 N.E.2d 464	2, 19
<i>State ex rel. Obojski v. Perciak</i> , 113 Ohio St.3d 486, 2007-Ohio-2453, 866 N.E.2d 1070	2, 22, 28
<i>State ex rel. Rootstown Local School Dist. v. Portage Cnty. Ct. of Comm. Pleas</i> , 78 Ohio St.3d 489, 678 N.E.2d 1365 (1997)	19
<i>State ex rel. Shumaker v. Nichols</i> , 137 Ohio St.3d 391, 2013-Ohio-4732, 999 N.E.2d 630	27
<i>State ex rel. Skyway Investment Corp. v. Ashtabula Cnty. Court of Common Pleas</i> , 130 Ohio St.3d 220, 2011-Ohio-5452, 957 N.E.2d 24	21, 22
<i>State ex rel. Suburban Construction Co. v. Skok</i> , 85 Ohio St.3d 645, 710 N.E.2d 710 (1999)	20
<i>State ex rel. Tubbs Jones v. Suster</i> , 84 Ohio St.3d 70, 701 N.E.2d 1002 (1998)	18, 19, 20, 22
<i>State ex rel. Verhovec v. Washington Cnty. Court of Common Pleas</i> , 137 Ohio St.3d 120, 2013-Ohio-4518, 998 N.E.2d 434	3, 22
<i>State ex rel. West v. McDonnell</i> , 139 Ohio St.3d 115, 2014-Ohio-1562, 9 N.E.3d 1025	2, 21
<i>State ex rel. White v. Junkin</i> , 80 Ohio St.3d 335, 686 N.E.2d 267 (1997)	1, 18, 19
<i>Village of Willoughby Hills v. Board of Park Commrs. of Cleveland Metropolitan Park District</i> , 3 Ohio St.3d 49, 209 N.E.2d 162 (1965)	12

Statutes

Ohio Revised Code Chapter 1545 1, *passim*

Ohio Revised Code Section 1545.02 4, 5, 25

Ohio Revised Code Section 1545.04 25

Ohio Revised Code Section 1545.05 4, *passim*

Ohio Revised Code Section 1545.06 2, *passim*

Ohio Revised Code Section 1545.09 9

Ohio Revised Code Section 1545.11 5, 14, 25

Ohio Revised Code Section 1545.12 5, 25

Ohio Revised Code Section 1545.20 12

Ohio Revised Code Section 1545.35 10

Ohio Revised Code Section 1545.36 10

Ohio Revised Code Section 1545.37 5, 10, 25

Ohio Revised Code Section 1545.38 5, 25

Ohio Revised Code Section 1545.40 5, 25

Ohio Revised Code Section 2101.06 1, *passim*

Ohio Revised Code Section 2101.07 28, 29

Ohio Revised Code Section 2101.24 23, 24

Ohio Revised Code Section 2101.24(A) 23, 24, 25

Ohio Revised Code Section 2101.24(B) 23

Ohio Revised Code Section 2101.24(C) 23, 24, 25, 26

Rules

Ohio Rules of Civil Procedure 54(D) 3, 29

INTRODUCTION

This original action for writ of prohibition improperly seeks appellate review of a non-final, non-appealable order that was entered by the Honorable Timothy J. Grendell, Judge of the Geauga County Common Pleas Court, Probate Division (the “Probate Court”) in the matter of *In re Chester Township Park District*, Case No. 84PC000139. As discussed more fully below, the underlying Probate Court matter was commenced in 1984 by the Chester Township Board of Trustees (the “Trustees”) by the filing of an application to create a township park district under Ohio Revised Code Chapter 1545. (*See* Application of the Chester Township Trustees under R.C. Chapter 1545, Case No. 84-PC-139, Joint Submission of Evidence, pg. 2).¹ In this regard, the Complaint for a Writ of Prohibition does not allege that the Probate Court lacks subject matter jurisdiction over the underlying case. Rather, it seeks to challenge whether the Probate Court erred *in the exercise of its jurisdiction* by how it responded to certain issues that came before the court as a result of an investigation of the Chester Township Park District that was lawfully undertaken by a special master commissioner under Ohio Rev. Code 2101.06.

This is an improper use of a writ of prohibition, which is an extraordinary remedy that “is not routinely or easily granted.” *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 336, 686 N.E.2d 267 (1997). As this Court has held, “[a]bsent a patent and unambiguous lack of jurisdiction, 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.” *Id.*; *Lingo v. State of Ohio*, 138 Ohio St.3d 427, 2014-Ohio-1052, 7 N.E.2d 1188, ¶ 41 (citing *State*

¹ On June 1, 2015, the parties jointly filed a two-volume pleading entitled, “Joint Submission of Evidence” that contains all of the relevant pleadings and orders from the underlying case. Each page of the “Joint Submission of Evidence” has been Bates-stamped from 0001 to 0421. All references to “Joint Evid.” in this Brief, therefore, shall be to the Bates-stamped page of the Joint Submission of Evidence on file with this Court.

ex rel. Miller v. Lake County Court of Common Pleas, 151 Ohio St. 397, 86 N.E.2d 464, paragraph three of syllabus (1949)). Thus, where, as here, a lower court has general subject-matter jurisdiction over the underlying case, any errors relating to whether it properly exercised its jurisdiction by granting a particular remedy is the type of error that should be corrected in the ordinary course of law by a direct appeal, not an extraordinary writ. *State ex rel. West v. McDonnell*, 139 Ohio St.3d 115, 2014-Ohio-1562, 9 N.E.3d 1025, ¶ 24 (“Any error [in ordering the forfeiture of the entire Scranton Road property] was an error in the exercise of jurisdiction, rather than an action undertaken in the absence of subject-matter jurisdiction”); *State ex rel. Obojski v. Perciak*, 113 Ohio St.3d 486, 2007-Ohio-2453, 866 N.E.2d 1070, ¶ 22 (question of whether trial judge erred in approving a settlement agreement “would be mere errors in the exercise of subject matter jurisdiction rather than errors establishing the lack of subject matter jurisdiction”).

In their Brief, the Trustees do not dispute that the Probate Court had subject matter jurisdiction over the original application to create the Chester Township Park District (“Park District”) and may continue to exercise jurisdiction over the Park District by, among other things, appointing and removing park commissioners, approving donations, approving the sale of land, and ultimately deciding whether to dissolve the park district in accordance with the requirements set forth in Chapter 1545 of the Ohio Revised Code. Moreover, the Trustees do not dispute that the Probate Court has the statutory authority under R.C. 2101.06 to appoint, *sua sponte*, a Special Master Commissioner to conduct an investigation into whether the Park District was operating in accordance with the original 1984 judgment entry and whether Park District Commissioners should be removed under R.C. 1545.06. Relators’ Complaint for a Writ of Prohibition therefore is not based upon a total and complete absence of subject matter

jurisdiction. Rather, it is improperly seeking to challenge whether the Probate Court has lawfully exercised its authority *to grant a particular remedy* – relating to the funding of the Chester Township Park District and the assessment of the Master Commissioner’s costs – that the Eleventh District Court of Appeals has determined *has not yet been* definitively granted by the Probate Court. *See In the Matter of Chester Twp. Park Dist.*, 11th App. Geauga No. 2014-G-3242, 2015-Ohio-1210, ¶ 7-8 (Mar. 31, 2015) (dismissing the Trustees’ appeal for lack of a final, appealable order because the probate court had not yet made a definitive ruling on the assessment of costs that caused any pecuniary harm).

For these reasons, therefore, the Court should deny the Relator’s petition for a writ of prohibition. It is well-established that “[p]rohibition will not lie to prevent an anticipated erroneous judgment.” *State ex rel. Verhovec v. Washington Cnty. Court of Common Pleas*, 137 Ohio St.3d 120, 2013-Ohio-4518, 998 N.E.2d 434, ¶ 13 (citations omitted). Here, given that the Probate Court has the jurisdiction to determine its own jurisdiction, it clearly has the jurisdiction to determine in the first instance whether it has the authority under Ohio law to grant a particular remedy. Moreover, as this Court has held, the Probate Court “has discretion as to how the costs of [the master commissioner] shall be assessed” under Civ. R. 54(D). *See State ex rel. Estate of Hards v. Klammer*, 110 Ohio St.3d 104, 2006-Ohio-3670, 850 N.E.2d 1197, ¶ 14 (denying writ of prohibition that challenged the trial court’s assessment of costs for a special master commissioner). Accordingly, the Court should conclude that Relators are not entitled to a writ of prohibition because any error that may be committed in determining whether to grant a particular remedy or any abuse of discretion in determining how to assess the special master commissioner’s costs are the types of errors that should be remedied by appeal, not an extraordinary writ of prohibition. *Id.*

STATEMENT OF FACTS

A. The Creation of the Chester Township Park District.

As set forth in the Docket that is included in the Joint Submission of Evidence, the underlying probate court matter was originally commenced by the Chester Township Trustees in 1984 through the filing of an application for the creation of a park district under R.C. Chapter 1545 with the Geauga County Court of Common Pleas, Probate Division (the “Probate Court”). (See Application of Chester Township Trustees, dated April 5, 1984, Joint Evid. 11-15). Under R.C. 1545.02, an “[a]pplication for the creation of a park district shall be made to the probate judge of the county within which the district is to be located.” *Id.* Here, because the proposed park district was located in Geauga County, the Chester Township Trustees filed their application with the Geauga County Probate Court, which issued a Judgment Entry on May 10, 1984, that created the Chester Township Park District and granted the Board of Commissioners of the Chester Township Park District with all of the powers and authority granted by the Ohio Revised Code. (See Judgment Entry, dated May 10, 1984, Joint Evid. 16-17).

Among other things, the 1984 Judgment Entry defines the territorial limits of the Chester Township Park District and provided that all of the township parks within Chester Township shall fall under the jurisdiction of the Chester Township Park District. (*Id.*); (See Affidavit of Mary Jane Trapp, Master Commissioner, filed on 6/1/2015, ¶ 5) (“Trapp Aff.”). Moreover, the 1984 Judgment Entry provided for the appointment of three commissioners in accordance with Ohio Revised Code 1545.05, and further provided that “said commissioners shall constitute the Board of Park Commissioners of the Chester Township Park District, a body politic and corporate with full authority and subject to such limitations as provided by law.” (See Judgment Entry, pg. 1, Joint Evid. 16) (Trapp Aff. ¶ 6).

After the Chester Township Park District was created in 1984, the Probate Court did not lose all subject-matter jurisdiction over the Park District. Rather, it continues to exercise jurisdiction over the Park District, including but not limited to the continuing jurisdiction to appoint the park commissioners and to remove any park commissioner “at the discretion of the probate judge, either upon complaint filed with such judge or upon his own motion.” (*See* R.C. 1545.05 and 1545.06). Moreover, it has the continuing jurisdiction, among other things, to approve all donations made to a park district, to approve the sale of lands by a park district, and to decide whether to dissolve the park district. (*See* R.C. 1545.02, 1545.11, 1545.12, 1545.37, 1545.38, and 1545.40). Although the exercise of this continuing jurisdiction often arises in non-adversarial proceedings, this Court has long recognized that it is not unconstitutional for the General Assembly to delegate authority over the park district to the probate court. *See State ex rel. Bryant v. Akron Metropolitan Park Dist.*, 120 Ohio St. 464, 476, 166 N.E.2d 407 (1929) (rejecting constitutional challenge to the probate court’s authority to appoint park district commissioners).

Indeed, in this case, the Docket reflects that Geauga County Probate Case No. 84-PC-139 has remained active for the past 30 years, and that the probate judges have continued to exercise jurisdiction over the park district by, among other things, appointing, re-appointing, and removing Park District commissioners. (*See* Docket, Case No. 84-PC-139, Geauga County Probate Court, Joint Evid. pp. 1-10). Although the front page of the docket has a reference to the case being “closed,” the Deputy Clerk of the Geauga County Probate Court, Karla N. Murray, has explained that this designation is for “statistical reporting purposes only,” and that the case has remained active for the past 30 years. (Affidavit of Karla N. Murray, Deputy Clerk, filed 6/1/2015, ¶ 4-5). As set forth in Karla Murray’s Affidavit, in fact, the Supreme Court’s

Instructions for the Preparation of Statistical Report Forms for Courts of Common Pleas expressly provide that a “non-adversarial” civil action that does not have a defendant does not fall within the category of cases to be reported as “open” cases on Form C of the Supreme Court of Ohio’s reporting form. (Murray Aff. ¶ 4, Ex. B). Rather, the Instructions for Preparation of Statistical Report Forms for Courts of Common Pleas provide that “non-adversarial civil actions are not to be reported in this category or elsewhere on this report form.” (*Id.*) Thus, contrary to the Township’s suggestions, Case No. 84-PC-139 has not been closed, but has continued to remain active on the Probate Court’s docket to the present day. (*Id.*)

B. The Probate Court’s Appointment of a Special Master Commissioner.

On or about March 5, 2014, an anonymous 29-page complaint entitled, “Chester Township Park District 2013 Review,” was submitted to the Chester Township Board of Trustees and to the Probate Court (the “2013 Review”). (Trapp Aff. ¶ 2). A true and correct copy of the 29-page 2013 Review, dated March 5, 2014, is included in the Joint Submission of Evidence at pages 252-280. (*Id.*) Because the Review raised serious issues about whether the Chester Township Park District was operating in accordance with the Probate Court’s original 1984 judgment entry and raised questions about whether one or more of the park commissioners should be removed under R.C. 1545.06, the Probate Court properly exercised its statutory authority under R.C. 2101.06 to appoint Attorney Mary Jane Trapp to serve as a Master Commissioner to investigate the issues raised by the 2013 Review and to make appropriate recommendations to the Court. (*See* Order for Appointment of Master Commissioner, dated March 20, 2014, Joint Evid. 18-20). Notice of this Appointment was mailed to both the Chester Township Trustees and to the members of the Board of Commissioners for the Chester Township Park District on March 20, 2014. (*See* Letter, dated March 20, 2014, Joint Submission of Evidence, pp. 021-022). In so doing, Judge Grendell advised the Chester Township Trustees

that, “[o]nce Master Commissioner Trapp has submitted her final report, I will schedule a hearing, if appropriate, to address this matter and related costs at a later date.” (*Id.*)

At that time, the Chester Township Trustees did not object to the appointment of the Master Commissioner by the Probate Court. (Trapp Aff. ¶ 8). To the contrary, throughout the Master Commissioner’s investigation, all three of the Chester Township Trustees and the Chester Township Fiscal Officer fully participated in the Master Commissioner’s investigation and never objected to Master Commissioner’s appointment at any time. (*Id.*) Indeed, in their Merit Brief, the Relators do not contend that the Probate Court lacked the authority to appoint a Special Master Commissioner to investigate the issues raised by the 2013 Review. Such authority in fact is clearly provided by R.C. 2101.06, which provides that the “probate judge, upon the motion of a party *or the judge's own motion*, may appoint a special master commissioner in *any* matter pending before the judge.” *Id.* (emphasis added). Moreover, R.C. 2101.06 provides that the Master Commissioner shall have the authority to prepare a written report and recommendation that sets forth “the commissioner's conclusions on the law and the facts involved.” *Id.* Thus, the Trustees do not challenge whether the Probate Court had the statutory authority to appoint a Special Master Commissioner in their Merit Brief.

C. The Master Commissioner’s Report, dated July 28, 2014.

Upon the completion of her investigation, the Master Commissioner then prepared and submitted a comprehensive, 252-page report, with recommendations, that is included in Volume 2 of the Joint Submission of Evidence at pages 158-409 (the “Master Commissioner’s Report”). In her Report, the Master Commissioner did not find any evidence of intentional disregard of controlling law on the part of the park commissioners or its administrative assistant. (Master Commissioner’s Report, pg. 12, Joint Evid. 169). She found, however, “that the township

leadership . . . have a very incomplete understanding of the *independent* nature of the park district and what laws are and are not applicable” under Ohio law. (*Id.*) (emphasis in original).

As set forth in the original 1984 judgment entry, the Chester Township Park District was created by the Probate Court to operate as a “separate body politic” with independent authority to levy taxes and to control all of the park lands that were described in Exhibits B and C to the 1984 Judgment Entry. (1984 Judgment Entry, pg. 1, Joint Evid. 16); (Master Commissioner’s Report, pg. 8, Joint Evid. 165). When it was originally created, in fact, the Chester Township Park District was funded by its share of local government and library funds passed through from the State of Ohio by the Geauga County Budget Commission, by donations, and by the payment of an inside millage of .08 mills that was raised in 1992 to .1 mill by the Chester Township Board of Trustees. (Master Commissioner’s Report, pg. 8, Joint Evid. 165) (Trapp Aff. ¶ 9). As set forth in the Master Commissioner’s Report, however, the Chester Township Board of Trustees subsequently voted in 2002 to eliminate the third source of funding for the park district – the inside millage – citing a sufficient reserve for the park district’s 2003 budget and the township trustees’ intent to shift money toward developing other park lands. (Master Commissioner’s Report, pg. 10, Joint Evid. 167); (Trapp Aff. ¶ 10). From that point on, funding from Chester Township has been on a project-by-project basis with maintenance services provided by the Township’s road department, but those maintenance services were also eliminated in 2013. (*Id.*)

In her Report, the Master Commissioner also found that the Park District’s By-Laws and a 1993 Agreement with the Chester Township Trustees were “in need of revision” because they conflicted with Ohio law. (Master Commissioner’s Report, pg. 13, Joint Evid. 170). The By-Laws of the Chester Township Park District Board of Commissioners expressly provide that “the Board of Park Commissioners . . . shall possess all of the powers . . . conferred on it by Chapter

1545 of the Ohio Revised Code,” including the authority to promulgate rules and regulations pursuant to Ohio Revised Code Section 1545.09 as the Board deems advisable for the preservation of good order within and adjacent to the parks and reservations of land, and for the protection and preservation of the parks, parkways and other reservations of land under its jurisdiction and control, and of the property and natural life therein.” (1984 By-Laws of Chester Township Park District Board of Commissioners, pg. 1, Joint Evid. 316).² Approximately one year after the Park District was created, in fact, the Chester Township Trustees and the Park District Commissioners signed a written agreement by which the Park District “assumed control of all parks and park lands owned by Chester Township beginning on April 5, 1985, and continuing for another period of one year and then renewable for an additional five year period.” (Master Commissioner’s Report, pg. 27, Joint Evid. 184); (Trapp Aff. ¶ 11). A true and correct copy of the 1985 Agreement is attached as Exhibit J to the Master Commissioner’s Report and is included in Volume II of the Joint Submission of Evidence at pages 328-329. (Trapp Aff. ¶ 11).

This 1985 Agreement was later amended and superseded by a 1993 Agreement that is attached as Exhibit K to the Master Commissioner’s Report and included in Volume II of the Joint Submission of Evidence at pages 331-333. (Trapp Aff. ¶ 12). Among other things, the 1993 Agreement provides that “the term of this agreement shall be for a period of five (5) years,”

² The By-Laws generally tract the revised code sections by requiring that no contract involving the expenditure of money shall become effective until the Geauga County Auditor certifies that there are sufficient appropriated funds for the Board of Park Commissioners in the custody of the Geauga County Treasurer. (Master Commissioner’s Report, pg. 21, Joint Evid. 178) (1984 By-Laws, § 4(a), Joint Evid. pp. 321-322). If so authorized, the By-Laws then provide that the Auditor shall issue a warrant to the Geauga County Treasurer to disburse the funds upon order of the Board as evidenced by a certificate of the Secretary. (Master Commissioner’s Report, pg. 21, Joint Evid. 718); (By-Laws, § 4(a), Joint Evid. 322). At the Board’s second meeting, however, the Commissioners adopted an alternative procedure that was authorized by the Ohio Revised Code, but they never amended the By-Laws to reflect this alternative procedure. (Master Commissioner’s Report, pg. 178, Joint Evid. 178).

and that thereafter, “the agreement shall renew on an annual basis unless either parties terminate the agreement as provided herein.” (1993 Agreement, ¶ 10, Joint Evid. 332). Moreover, Paragraph 11 of the 1993 Agreement provides that “[e]ither party may terminate this agreement prior to its expiration or the expiration of any renewal term by giving written notice of the intent to terminate to the chairman or clerk of the other party.” (*Id.* at ¶ 11). Paragraph 12 of the 1993 Agreement further provides that, “upon the expiration or termination of this agreement as provided herein, control of all parks and parklands shall revert to the Township.” (*See* 1993 Agreement, ¶ 12, Joint Evid. pp. 332-333). Thus, the 1993 Agreement provides the Chester Township Board of Trustees with the authority to remove all parkland from the Park District without applying or petitioning for dissolution of the Park District under Sections 1545.35, 1545.36, and/or 1545.37 of the Ohio Revised Code.

D. The Trustees’ Comments on the Master Commissioner’s Report.

After the Master Commissioner submitted her report and recommendations on July 28, 2014, the Probate Court scheduled a public hearing for August 25, 2014. (Trapp Aff. ¶ 13). A true and correct copy of the Transcript of Proceedings that were held on August 25, 2014, is included in the Joint Submission of Evidence at pages 27-94. (*Id.*) In this regard, the Chester Township Trustees fully participated in the public hearing and submitted timely comments by letter to the Probate Court on October 8, 2014. (*See* Judgment Entry, dated November 26, 2014, pg. 2, Joint Evid. 104); (Trapp Aff. ¶ 13-14).

A time-stamped copy of the Chester Township’s letter to the Probate Court is included in the Joint Submission of Evidence at pages 99-102. (*Id.*) In their comments letter, the Chester Township Trustees did not object to the Master Commissioner’s appointment to investigate the Park District. (Letter, dated 10/8/2014, Joint Evid. 99-102) (Trapp Aff. ¶ 15). Rather, in their letter, the Chester Township Trustees and Fiscal Officer stated:

“We are pleased that the Master Commissioner (MC) has incorporated a number of opportunities for improvement that include recommendations to the MC by members of the Board of Trustees and/or Fiscal Officer. We are hopeful that moving forward the Park Board will work with the Board of Trustees in developing strategic plans and stabilized funding for the park.”

(*See* Letter, dated 10/8/2014, pg. 1, Joint Evid. 99). In so doing, the Township’s Letter stated that “[t]he Chester Township Board of Trustees and Fiscal Officer are eager to move forward in working with the Chester Township Park Board, and we thank the Probate Court [and] Master Commissioner Trapp for your efforts.” (*Id.* at pg. 4, Joint Evid. 104).

E. The Probate Court’s Judgment Entry, dated November 26, 2014.

Upon consideration and review of the Master Commissioner’s Report and Recommendations, the supporting exhibits, and the comments made by the Chester Township Trustees, the Probate Court then issued a Judgment Entry on November 26, 2014, that set forth a number of Findings of Fact and Conclusions of Law. (*See* Judgment Entry, dated November 26, 2014, Joint Evid. 103-110). In this Judgment Entry, the Probate Court found that the Chester Township Park District was originally formed by the Geauga County Probate Court in 1984 “to operate as a separate governmental entity” with its own separate funding sources. (*Id.*, Findings of Fact, ¶ 2-4, Joint Evid. 104). Sometime in 2002, however, the Probate Court found that the Chester Township Trustees “terminated the dedicated inside millage” for the Township Park District, which was contrary to the purpose and intent of the original judgment entry to form a “separate, distinct, and independent governmental entity.” (*Id.*, Findings of Fact, ¶ 5-6, Joint Evid. 105). In so doing, the Probate Court concluded that the Township’s elimination of dedicated millage “directly contravened the fundamental purpose” of the original judgment

entry, which was to create an “independent Park District, free from the vicissitudes of Township government and politics.” (*Id.*, Conclusions of Law, ¶ 3-4, Joint Evid. 106).³

In this regard, the Probate Court further concluded that the Park District Commissioners (not the Township Trustees) had the statutory authority under R.C. 1545.20 to levy up to one-half mill for park funding purposes. (*Id.*, Conclusions of Law, ¶ 4, Joint Evid. 106-107). In order to ensure that the Park District Commissioners are able to perform their statutory duties in accordance with the purpose and intent of the original formation documents, therefore, the Probate Court concluded that the Park District Commissioners needed to take appropriate action, as permitted by statute, to ensure that it had a dedicated source of independent funding by January 2016. (*Id.*, Conclusions of Law, ¶ 5, Joint Evid. 107). Moreover, because the Township Trustees had wrongfully terminated the Park District’s prior millage funding in 2002, the Probate Court found that the Trustees had a “duty” to ensure that dedicated funds were made available “[u]ntil the Park District is able to establish a dedicated independent funding source.” (*Id.*, Conclusions of Law, ¶ 6, Joint Evid. 107). It did not, however, order the Township to pay any particular sum of funds. (*Id.*)

In addition to the termination of funding, the Probate Court also concluded that the Chester Township Trustees circumvented the purpose and intent of the original judgment entry by entering into an agreement with the Park District, which granted the Township Trustees (not the Park Commissioners) with the authority to exercise the Park District’s levy powers under R.C. 1545.20, and which granted the Township Trustees the authority “to dictate the policies and

³ It is well-established that the purpose of R.C. Chapter 1545 is to authorize the creation of park districts “as separate political subdivisions” that are free from interference by other political subdivisions. *See Village of Willoughby Hills v. Board of Park Commrs. of Cleveland Metropolitan Park District*, 3 Ohio St.3d 49, 209 N.E.2d 162 (1965) (holding that a municipality’s attempt to impose an excise tax on a park district was an “unwarranted interference with a political subdivision of the state not authorized by statute”).

procedures employed by the Park District Commissioners.” (*Id.*, Conclusions of Law, ¶ 7, Joint Evid. 108). The Probate Court concluded that this “current agreement between the Township and the Park” conflicted “with the original Township application and judicial formation documents creating the Park District.” (*Id.*) Thus, the Probate Court directed the Master Commissioner to meet with the Township Trustees and the Park District Commissioners in order to formulate a new agreement that would not conflict with the requirements of R.C. Chapter 1545 and the terms of the original application and judgment entry that created the Park District. (*Id.*) It further provided that the “cost of the Master Commissioner shall be borne 75% by the Chester Township/Chester Park District and 25% by the Court.” (*Id.* at ¶ 13, Joint Evid. 109).

Importantly, the Probate Court’s November 26th Judgment Entry did not include any orders that expressly compelled the Township Trustees to pay any sum of money or take any other specific action. Although the Probate Court found that “the Township Trustees . . . have a duty to assure that adequate dedicated funds are made available to the Park District to perform the Park District’s statutory duties” until the Park District “is able to establish a dedicated independent funding source,” it did not compel or order the Township Trustees to pay any particular sum. (*Id.* at ¶ 6, Joint Evid. 107). Rather, it merely directed the *Master Commissioner* to meet “with the Chester Township Trustees and the Park District Commissioners to facilitate the finalization and approval of a 2015 Budget and funding for the Chester Township Park District.” *Id.* Indeed, as the Township concedes in its Merit Brief, the Township had “already approved the Park District’s requested budget for 2015 for \$75,000.” (Township Merit Brief, pg. 8). This \$75,000 budget was “already approved” by the Chester Township Trustees before the Probate Court’s Order. (*Id.*) Thus, the Township is not presently subject to any order to pay any specific sum of funds to the Park District.

Similarly, the Probate Court did not order the Park District to amend its 1993 Agreement. Rather, it simply directed the *Master Commissioner* to meet with the Township Trustees and the Park District Commissioners to discuss the formulation of a new agreement. (Judgment Entry, 11/26/14, ¶ 7, Joint Evid. 107). In so doing, the Probate Court did not compel the Trustees to attend any meetings with the Master Commissioner. Rather, as the Probate Court explained in his Status Conference Entry, dated April 29, 2015, the Court “simply requested and did not order such a meeting.” (Status Conference Entry, pg. 1, Joint Evid. 155). Indeed, a review of the Probate Court’s November 26th Judgment Entry confirms that all of the orders set forth therein are directed at either the Master Commissioner or the Park District, not the Township Trustees:

- ¶ 6: Directing the *Master Commissioner* to meet with the Township Trustees and Park District Commissioners to discuss funding for the Chester Township Park District;
- ¶ 7: Directing the *Master Commissioner* to meet with the Township Trustees and Park District Commissioners to formulate an agreement that is consistent with and does not conflict with the authority of the Park District under O.R.C. Chapter 1545 and the initial Township application and judicial documentation forming the Park District.
- ¶ 9: Ordering the *Chester Park District Commissioners* to comply with the statutory bonding requirement in R.C. 1545.05.
- ¶ 10: Ordering the *Chester Park District Commissioners* to submit all donations to the Probate Court for approval pursuant to R.C. 1545.11.
- ¶ 11: Ordering the *Chester Township Park District Commissioners* to comply with all applicable Ohio laws and to take the actions necessary to comply with the recommendations of the Master Commissioner to the extent required to maintain compliance with applicable law.

(Nov. 26th Judgment Entry, Conclusions of Law, Joint Evid. 107-109). Indeed, even in the paragraph that addressed the payment of costs, the Probate Court did not order the Township to pay any money. Rather, it only provided that 75% of the cost of the Master Commissioner shall be borne by the “Chester Township/Chester Park District,” but he did not determine the amount

of the Master Commissioner's fees nor specify which entity – Chester Township or Chester Township Park District – shall pay such costs. (*Id.* at ¶ 13, Joint Evid. 109).

F. The Township's Appeal to the Eleventh District Court of Appeals.

Following the entry of the Probate Court's November 26th Judgment Entry, the Chester Township Trustees filed a Notice of Appeal on December 12, 2014, to the Eleventh District Court of Appeals. (*See* Notice of Appeal, dated 12/12/14, Joint Evid. 111). In so doing, the Trustees also filed a Motion to Stay the November 26th Judgment Entry pending appeal, which was heard by the Probate Court on December 15, 2014. (Stay Motion, dated 12/12/14, Joint Evid. 115-117). In the Stay Motion, the Township Trustees challenged *for the first time* whether the Probate Court had the subject matter jurisdiction to grant the relief set forth in the November 26th Judgment Entry. (*Id.*) Upon review, however, the Probate Court rejected the Township's jurisdictional arguments, issuing a second Judgment Entry and Supplemental Judgment Entry on December 15, 2014, that concluded as follows:

1. The Probate Court has continuing subject matter jurisdiction over Case No. 84PC139, including but not limited to the authority to remove Chester Township Park Board members and to oversee the Park District under R.C. 1545.05 and 1545.06.
2. The Probate Court has jurisdiction to investigate the allegations raised by the 2013 Review document because it called into question whether one or more of the Park District board members should be removed and, pursuant to R.C. 1545.06, the Probate Court has the authority to remove members of the Chester Township Park District Board on the Court's own motion.
3. The Probate Court has the inherent authority to enforce the terms of the original judgment entry creating the Park District by ensuring that it is "complied with by the Township Trustees and the Park Board" and by ensuring that Trustees' current agreement with the Park Board does not contravene and conflict with the judgment entry by attempting "to circumvent or improperly limit the statutory authority of the Park Board and the independent nature of the Park District, as a separate governmental entity, in contravention of Judge Lavrich's 1984 order."

(Judgment Entry and Supplemental Judgment Entry, dated December 15, 2015, Joint Evid. ¶ 131-135). In so doing, the Probate Court denied the Township's stay motion because it determined that the November 26, 2014 Judgment Entry was not a final, appealable order, and that "several actions and decisions remain pending by the Master Commissioner and by the Court before an appeal is permitted." (*Id.*)

In their Merit Brief, Relators attempt to belittle the Probate Court's jurisdictional findings by suggesting that the November 26th Judgment Entry set forth the "initial justification" for subject matter jurisdiction, and that the Probate Court's "later reliance" upon its "inherent" authority to enforce the 1984 Judgment Entry was a "new" justification that was made "shortly after the Chester Trustees complain[ed] that he has no jurisdiction under Chapter 1545." (Relators' Merit Brief, pp. 16-18). This is a disingenuous argument that wrongfully attempts to belittle the Probate Court in a manner that is ultimately immaterial to the legal issues presented in this case. At the time that the Probate Court issued its November 26th Judgment Entry, the Township had been fully participating in the Master Commissioner's investigation and the other Probate Court proceedings and had *never* objected to the Probate Court's exercise of subject matter jurisdiction in any manner. Indeed, the statutory references to R.C. 1545.05 and 1545.06 in the November 26th Judgment Entry were not intended to address the Township's jurisdictional objections. Rather, they were intended to explain why the Probate Court appointed Mary Jane Trapp as Master Commissioner to investigate the matters raised by the 2013 Review. (November 26th Judgment Entry, pg. 1, Joint Evid. 103). The Probate Court therefore did not actually address the Township's jurisdictional objections until after they were first raised in

December 2014. (Judgment Entry and Supplemental Judgment Entry, dated December 15, 2014, Joint Evid. 131-135).⁴

After the December 15th Hearing, the Eleventh District Court of Appeals issued a Judgment Entry on December 23, 2014, that temporarily stayed the Probate Court's Order of November 16, 2014, pending appeal. (*See* Judgment Entry, dated 12/23/2014, Joint Evid. 136). Upon further review, however, the Eleventh District Court of Appeals later issued a Memorandum Opinion on March 31, 2014, that dismissed the appeal for lack of a final, appealable order. (*See In the Matter of Chester Twp. Park Dist.*, 11th App. Geauga No. 2014-G-3242, 2015-Ohio-1210, Joint Evid. 139-142). First, with respect to the Township's challenge to the Probate Court's award of costs, the Court of Appeals held that this order was not a final, appealable order because "no cost amount has been finally fixed," and thus "the underlying order does not fully and finally resolve the issue appellant challenges." (*Id.* at ¶ 7, Joint Evid. 141). Moreover, because "the trial court has not yet approved and ordered payment of the Master Commissioner's fees and costs," the Eleventh District held that "there is no actual, immediate specified amount for which appellant is responsible." *Id.* at ¶ 8. Accordingly, the Eleventh District dismissed the appeal for lack of standing because "[t]he pecuniary interest at issue" is "future, contingent, and speculative." *Id.*

⁴ In this regard, Relators also have attempted to belittle the Probate Court by stating that "Respondent misunderstands his limited jurisdiction." (Relators' Merit Brief, pg. 9). Contrary to the Township's assertions, however, it is the Relators (not Respondent) that "misunderstands" the Probate Court's jurisdiction. In discussing the probate court's "inherent authority" to enforce the 1984 judgment entry, the Probate Court was relying upon well-established case law that recognizes that all courts have the "inherent authority" to enforce their prior judgments and orders. (*See* Judgment Entry, dated December 15, 2015, Joint Evid. 133); (Supplemental Judgment Entry, dated December 15, 2015, Joint Evid. 135) (citing *Pergande v. Pergande*, 11th Dist. App. No. 90-A-1497 (Apr. 26, 1991), citing and relying upon *Hale v. Smith*, 55 Ohio St. 210 (1896)). Indeed, as discussed more fully below, this Court has long recognized that the courts have the "inherent" authority to enforce their prior orders and judgments. *Record Publishing Co. v. Kainrad*, 49 Ohio St.3d 296, 300, 551 N.E.2d 1286 (1990) (citations omitted).

The Chester Township Trustees did not file an appeal from the Eleventh District’s judgment entry to the Ohio Supreme Court. Instead, they sought to circumvent the Eleventh District’s ruling by filing a writ of prohibition that raises the same jurisdictional challenges that were the subject of their Eleventh District appeal. As discussed more fully below, however, the Township’s arguments are legally insufficient to justify an extraordinary writ of prohibition. Indeed, given that the Eleventh District’s ruling that the Trustees have not yet become subject to any definitive order that has caused actual and immediate harm, this Court should not grant an extraordinary writ, but direct the Trustees to file an appeal to the Eleventh District Court of Appeals if and when they ever become subject to a specific order that causes an actual injury.

LAW AND ARGUMENT

I. Proposition of Law #1: A Writ of Prohibition Should Not Be Granted Unless The Relators Can Satisfy Their Heavy Burden To Establish That the Probate Court Patently and Unambiguously Lacks Subject Matter Jurisdiction Over The Underlying Case.

It is well-established that a writ of prohibition is an extraordinary remedy that “is not routinely or easily granted.” *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 336, 686 N.E.2d 267 (1997). In general, a petition for a writ of prohibition ordinarily may be used “solely and only” to test and determine the “subject matter jurisdiction of the inferior tribunal.” *State ex rel. Eaton Corp. v. Lancaster*, 40 Ohio St.3d 404, 409, 534 N.E.2d 46, 52 (1988). As this Court has explained, “[s]ubject matter jurisdiction is the power of a court to entertain and adjudicate a particular class of cases.” *Bank of America, N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 19; *see also State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 75, 701 N.E.2d 1002 (1998) (“Subject matter jurisdiction is a court’s power to hear and decide a case on the merits”). “A court’s subject-matter jurisdiction is determined without regard to the rights of the individual parties involved in a particular case.” *Bank of America, N.A.*, 141 Ohio St.3d at

79; *State ex rel. Tubbs Jones*, 84 Ohio St.3d at 75. Thus, where “a trial court has general [subject matter] jurisdiction over a particular type of case, a prohibition action usually cannot be maintained to determine whether the exercise of jurisdiction in a particular instance is proper.” *State ex rel. Leatherworks Partnership v. Stuard*, 11th Dist. Trumbull No. 2002-T-0017, 2002-Ohio-6477, 2002 WL 3163530, ¶ 17 (citing *State ex rel. Enyart v. O’Neill*, 71 Ohio St.3d 655, 657, 646 N.E.2d 1110 (1995)).

In this regard, it is also well-established that a trial court has the right to “determine its own jurisdiction,” and that the party “challenging the court’s jurisdiction possesses an adequate remedy by appeal.” *State ex rel. White*, 80 Ohio St.3d at 336; *State ex rel. Rootstown Local School Dist. v. Portage Cnty. Ct. of Comm. Pleas*, 78 Ohio St.3d 489, 491, 678 N.E.2d 1365 (1997). Thus, unless Relators can establish that the Probate Court “patently and unambiguously” lacks jurisdiction over the underlying matter, the trial court has “the right to determine the bounds of its own jurisdiction, and any error in that determination should be remedied upon appeal.” *Lingo v. State of Ohio*, 138 Ohio St.3d 427, 2014-Ohio-1052, 7 N.E.3d 1188, ¶ 41 (citing *State ex rel. Miller v. Lake Cnty. Ct. of Comm. Pleas*, 151 Ohio St. 397, 86 N.E.2d 464, paragraph three of syllabus (1949)).

Here, Chester Township does not argue that the Probate Court lacked subject matter jurisdiction over the underlying case or lacked the statutory authority to appoint the Special Master Commissioner. Rather, Relators are challenging only the portions of the November 26th Judgment Entry that pertain to the Chester Township Trustees, arguing that the Probate Court “improperly ordered without valid authority or jurisdiction” that the Trustees have a “duty” to assure “adequate” funding for the Park District and “to pay the Master Commissioner’s fees.” (Relators’ Merit Brief, pg. 10). This argument, however, is not challenging whether the Probate

Court has subject matter jurisdiction over the underlying case. It is challenging whether the Probate Court may exercise jurisdiction over a particular party – the Township Trustees. By definition, therefore, the Township’s jurisdictional argument necessarily involves “the consideration of the rights of the parties,” and thus is not the proper subject of a writ of prohibition under Ohio law. *State ex rel. Tubbs Jones*, 84 Ohio St.3d at 74-75.⁵

In this regard, this Court generally has held that a writ of prohibition should be granted only where there is a patent and unambiguous lack of subject matter jurisdiction over the entire case, and not to correct the lack of personal jurisdiction or the alleged failure to perfect service of process. *See State ex rel. Suburban Construction Co. v. Skok*, 85 Ohio St.3d 645, 647, 710 N.E.2d 710 (1999) (“If contested allegations of defective service of process are not premised upon a complete failure to comply with the minimum-contacts requirement of constitutional due process, prohibition will not lie”); *State ex rel. Henderson v. Sweeney*, 8th Dist. Cuyahoga App. No. 102784, 2015-Ohio-2282, ¶ 11 (same). While this Court has recognized a very limited exception for extraordinary cases where “the lack of [personal] jurisdiction was ‘premiered on a complete failure to comply with constitutional due process,’” this exception is not applicable to this case because the Township is not arguing that “it lacks sufficient due-process minimum contacts” with Geauga County. *Skok*, 85 Ohio St.3d at 647 (citations omitted).

Moreover, unlike the juvenile court judge who conceded that he lacked *in personam* jurisdiction over the child in a parentage action that was the subject of the writ of prohibition in *State ex rel. Doe v. Capper*, 132 Ohio St.3d 365, 2012-Ohio-2686, 972 N.E.2d 553, Judge

⁵ We note that, if the Court were to agree with Relators’ arguments, it would not be determining that the November 26th Order was “void” *ab initio* for lack of subject matter jurisdiction. Rather, it simply would be determining that the Probate Court erred in how it exercised its jurisdiction by wrongfully applying the November 26th Order to the Township Trustees. *See Bank of America*, at ¶ 19 (“If a court possesses subject-matter jurisdiction, any error in the invocation of jurisdiction over a particular case causes a judgment to be voidable rather than void”).

Grendell has not conceded that the Probate Court patently and unambiguously lacks *in personam* jurisdiction over the Chester Township Trustees who were the original parties who voluntarily initiated the underlying probate court action and who fully participated in the probate court proceedings, without objection, from the appointment of the Special Master Commissioner on March 20, 2014, until the filing of the Township’s stay motion on December 12, 2014. *See State ex rel. Skyway Investment Corp. v. Ashtabula Cnty. Court of Common Pleas*, 130 Ohio St.3d 220, 2011-Ohio-5452, 957 N.E.2d 24, ¶ 16 (holding that relators waived any personal jurisdiction objections because “it entered an appearance in the underlying case and did not raise any jurisdictional objection until almost a year later”). Thus, any error in exercising personal jurisdiction over the Township Trustees is the type of error that can be remedied through a post-judgment appeal, not through an extraordinary writ. *Id.* at ¶ 18.

Further, a writ of prohibition should not be granted because the Township’s objection is based primarily upon the nature of the proposed *remedy* that may be granted, not the total and complete absence of subject matter jurisdiction. In its Merit Brief, the Township repeatedly takes issue with the Probate Court’s statements that the Trustees have an alleged “duty” to ensure “adequate” funding of the Park District, and that 75% of the Master Commissioner’s fees shall be borne by “Chester Township/Chester Park District.” (Relators’ Merit Brief, pp. 1, 2, 3, 7, 8, 10, 11, 12, 13, 15, 16, 22, 23, 24). This is a challenge to a proposed *remedy*, which, as this Court has held, is the type of error that can be corrected, if necessary, via a post-judgment appeal, not an extraordinary writ. *State ex rel. West v. McDonnell*, 139 Ohio St.3d 115, 2014-Ohio-1562, 9 N.E.3d 1025, ¶ 24 (holding that the trial court’s alleged error in ordering the forfeiture of the entire Scranton Road property “was an error in the exercise of jurisdiction” that cannot give rise to a writ of prohibition); *State ex rel. Skyway Investment Corp.*, 130 Ohio St.3d 220, 2011-Ohio-

5452, 957 N.E.2d 24, ¶ 18 (holding that the trial court’s alleged errors in appointing a receiver and a person to effectuate the conveyance of property in the underlying case and in joining Skyway Investment Corp. as a party defendant are the types of errors in the exercise of jurisdiction that can be remedied by appeal); *State ex rel. Obojski v. Perciak*, 113 Ohio St.3d 486, 2007-Ohio-2453, 866 N.E.2d 1070, ¶ 22 (the trial court’s alleged errors in approving a settlement agreement “would be mere errors in the exercise of subject matter jurisdiction rather than errors establishing the lack of subject matter jurisdiction”). Accordingly, consistent with this well established case law, the Court should not grant an extraordinary writ.

In this regard, denial of an extraordinary writ is particularly appropriate because, as the Eleventh District has held, the Probate Court *has not yet issued* any orders that specifically compel the Township Trustees to pay any particular sum to the Park District or to pay any of the Master Commissioner’s costs. This is a critical point because it is well-established that “[p]rohibition will not lie to prevent an anticipated erroneous judgment.” *State ex rel. Verhovec v. Washington Cnty. Court of Common Pleas*, 137 Ohio St.3d 120, 2013-Ohio-4518, 998 N.E.2d 434, ¶ 13 (citing *State ex rel. Tubb Jones v. Suster*, 84 Ohio St.3d 70, 74, 701 N.E.2d 1002 (1998), citing *State ex rel. Heimann v. George*, 45 Ohio St.2d 231, 232, 344 N.E.2d 130 (1976)). Here, as previously discussed, the Probate Court has the jurisdiction to determine its own jurisdiction and to decide in the first instance whether a particular remedy is beyond the “bounds of its own jurisdiction” under Ohio law. *Lingo*, 138 Ohio St.3d 427, 2014-Ohio-1052, 7 N.E.3d 1188, at ¶ 41. Indeed, unless Relators can establish that the Probate Court patently and unambiguously lacks subject matter jurisdiction to hear the underlying case, any error in determining the bounds of its own jurisdiction is an error that can be remedied on appeal. *Id.*

In this case, in fact, the Chester Township Trustees have already attempted to file an appeal to the Eleventh District Court of Appeals, which held that the underlying order is not yet a final, appealable order because it did not actually grant any definitive relief that caused any actual and immediate harm to the Township. *See In the Matter of Chester Twp. Park Dist.*, 11th App. Geauga No. 2014-G-3242, 2015-Ohio-1210, ¶ 7-8 (Joint Evid. 141-142). This dismissal order does not mean that the Relators can turn around and file a writ of prohibition action in the Ohio Supreme Court. Rather, it simply means that the Trustees will have the right to appeal the Probate Court's orders if and when the lower court ever issues a final and appealable order that causes an actual injury to the Township. *See, e.g., State ex rel. Huntington National Bank v. Kontos*, 11th Dist. Trumbull No. 2013-T-0089, 2014-Ohio-1374, ¶ 15 (holding that, even though Relators' appeal had been dismissed for lack of a final, appealable order, "an adequate legal remedy does exist" once "a damages hearing has been held and a final judgment has been rendered, if respondent were to make an improper decision"). Accordingly, for this additional reason, the Court should not grant a writ of prohibition.

II. Proposition of Law #2: The Probate Court Has The Statutory Authority To Appoint The Special Master Commissioner To Investigate The Chester Township Park District And The Inherent Authority to Enforce Its Prior Judgment Entry.

In its Merit Brief, the Township argues 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." (Relators' Merit Brief, pg. 18) (citing *Corron v. Corron*, 40 Ohio St.3d 75, 77, 531 N.E.2d 708 (1988)). This argument, however, misconstrues the broad and remedial nature of the subject matter jurisdiction that has been granted to probate courts by R.C. 2101.24. After identifying the general types of cases that have been delegated to the probate courts in R.C. 2101.24(A) and (B), R.C. 2101.24(C) further provides that "[t]he 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.” *Id.* Thus, as one appellate court recently explained, “R.C. 2101.24(C) confers broad authority to the probate court to address collateral matters,” including the plenary power “to exercise complete jurisdiction over the subject matter to the fullest extent necessary.” *In re Cletus P. McCauley and Mary McCauley, Irrevocable Trust*, 5th Dist. Stark No. 2013 CA00237, 2014-Ohio-3489, ¶ 43 (citing *In re Ewanicky*, 8th Dist. Cuyahoga No. 81742, 2013-Ohio-3351, ¶ 8, and *Johnson v. Allen*, 101 Ohio App.3d 181, 185, 655 N.E.2d 240 (8th Dist. 1995)).

In this regard, this Court has consistently interpreted R.C. 2101.24(C) broadly as authorizing the probate court to grant “*any* relief required to fully adjudicate the subject matter within the probate court’s exclusive jurisdiction.” *State ex rel. Lewis v. Moser*, 72 Ohio St.3d 25, 29, 647 N.E.2d 155 (1995) (emphasis added). In *Lewis*, for example, the relators argued that the probate court lacked the jurisdiction to hear claims against the executor for conversion and breach of fiduciary duty “because the probate court’s limited jurisdiction under R.C. 2101.24 does not include claims for compensatory and punitive damages.” *Id.* at 26-27. Although Relator cited case law that probate courts lack the jurisdiction under R.C. 2101.24 to award money damages, this Court ultimately denied an extraordinary writ because it concluded that “the probate court’s plenary jurisdiction at law and in equity under R.C. 2101.24(C) authorizes any relief required to fully adjudicate the subject matter within the probate court’s exclusive jurisdiction,” and that “claims for breach of fiduciary duty, which inexorably implicate control over the conduct of fiduciaries, are within the subject matter jurisdiction by virtue of R.C. 2101.24(A)(1)(c) and (l).” *Id.*

This same reasoning applies equally to this case. Here, in addition to the exclusive jurisdiction conferred over the types of matters listed in section (A)(1), R.C. 2101.24(A)(2)

provides that the probate court also has exclusive jurisdiction over a particular subject matter if “another section of the Revised Code expressly confers jurisdiction over that subject matter upon the probate court,” and “no section of the Revised Code expressly confers jurisdiction over that subject matter upon any other court or agency.” *See* R.C. 2101.24(A)(2). Here, Ohio Revised Code Chapter 1545 expressly confers subject matter jurisdiction upon the Probate Court to create a park district and to exercise continuing jurisdiction over a park district by, among other things, exercising authority over the appointment and removal of park district commissioners, the approval of all donations, the approval of all sales of land, and the dissolution of the park district. *See* R.C. 1545.02, 1545.04, 1545.05, 1545.06, 1545.11, 1545.12, 1545.37, 1545.38, and 1545.40. Thus, if any issues relating to the foregoing subject matter come properly before the court, then the probate court has the “plenary power at law and in equity to dispose fully” of the matter and to grant any remedy “*unless the power is expressly otherwise limited or denied by a section of the Revised Code.*” R.C. 2101.24(C) (emphasis added). The question presented, therefore, is not whether a particular remedy is expressly “authorized” by the Ohio Revised Code. Rather, it is whether a particular remedy is expressly “limited or denied by a section of the Ohio Revised Code.” *Id.* (emphasis added).

Here, it is undisputed that the issues raised by the 2013 Review involved matters that fall within the scope of the Probate Court’s jurisdiction under R.C. Chapter 1545. As Judge Grendell explained in his Judgment Entry of December 15, 2015, both R.C. 1545.05 and 1545.06 grant the probate courts with the statutory authority to appoint park commissioners and to remove park commissioners “at the discretion of the probate judge, either upon complaint filed with such judge *or upon his own motion.*” *See* R.C. 1545.06 (emphasis added). Having been delegated the power to remove a park commissioner *sua sponte* upon the probate court’s own motion,

therefore, it necessarily follows that the court also has the statutory authority and plenary power to investigate the operations of the park district, if necessary, to determine whether the park district commissioners are lawfully and properly exercising the powers that has been granted to them by the probate court. In this regard, this statutory authority to appoint and remove park district commissioners is similar to the probate court's authority to appoint and remove guardians, which, as this Court has held, includes the "plenary authority to investigate guardians" and "to act upon the information brought before it." *In re Guardianship of Spangler*, 126 Ohio St.3d 339, 2010-Ohio-2471, 933 N.E.2d 1067, at ¶ 45, ¶ 54. Thus, it is undisputed that the Probate Court had the jurisdiction and authority to appoint a special master commissioner to investigate the allegations of the 2013 Review.

Having properly come before the Probate Court under R.C. 1545.06, therefore, it automatically follows under R.C. 2101.24(C) that the Probate Court has the "plenary power at law or in equity to dispose fully" of the issues that were raised by the 2013 Review and the Master Commissioner's investigation. Contrary to the Township's suggestions, such remedies are not limited only to whether to remove the Park District Commissioners under R.C. 1545.06. Rather, it includes the authority to enforce the terms of the original 1984 judgment entry, which created the park district as a separate political subdivision with all of the power and authority granted by the Ohio Revised Code. As this Court has explained, "[w]e have long held that '[t]he power of a court to enforce its own proper orders is fundamental and inherent, as well as constitutional; necessarily so, to give it standing and afford respect and obedience to its judgment. This is upon broad ground of public policy, and without which power the judicial edifice would fall.'" *Record Publishing Co. v. Kainrad*, 49 Ohio St.3d 296, 300, 551 N.E.2d 1286 (1990) (citations omitted). Thus, it is well-established that "[a] trial court possesses the

inherent authority to enforce its own judgments.” *Nies v. Fritzsch Custom Builders, L.L.C.*, 186 Ohio App.3d 35, 2010-Ohio-357, 926 N.E.2d 341, ¶ 41 (1st Dist. 2010) (citing *Record Publishing Co.*); *see also State ex rel. Godale v. Geauga Cty. Court of Common Pleas*, 166 Ohio App.3d 851, 853 N.E.2d 708 (11th Dist. 2006) (holding that subsequent change in zoning laws would have no effect upon the Geauga County Court of Common Pleas’s “inherent authority to enforce its prior zoning judgments”).

In their Merit Brief, the Township takes issue with Respondent’s “inherent authority” argument by arguing that probate court jurisdiction “cannot be created or expanded beyond that expressed in the statute.” (Relators’ Merit Brief, pg. 18). This argument ignores the fact, however, that this Court has characterized “[t]he power of a court to enforce its own proper orders” as being a “fundamental and inherent” power, as well as “constitutional,” and “necessarily so, to give it standing and afford respect and obedience to its judgment.” *Record Publishing Co.*, 49 Ohio St.3d at 300. In other words, it is “inherent” in the exercise of any judicial authority because, without it, “the judicial edifice would fall.” *Id.* Here, Relators do not cite to any statutes or cases that expressly state that probate courts are the exception to this general rule, or expressly limit or deny a probate court’s authority to enforce their prior judgments and orders. Accordingly, given that the Relators cannot point to any statutes or cases that would clearly and unambiguously establish that the Probate Court lacks the jurisdiction to enforce the 1984 Judgment Entry, the Court should conclude that Relators are not entitled to the extraordinary remedy of a writ of prohibition. *See State ex rel. Shumaker v. Nichols*, 137 Ohio St.3d 391, 2013-Ohio-4732, 999 N.E.2d 630, ¶ 15 (denying writ of prohibition because Relator “points to no specific statute or constitutional provision that Judge Nichols patently ignored or manifestly violated in his ruling”).

Indeed, in their Brief, Relators do not argue that the Probate Court was patently and unambiguously without any subject matter jurisdiction to enforce the 1984 Judgment Entry. Rather, they simply take issue with the Probate Court’s alleged attempt to enforce the 1984 Judgment Entry *against the Township Trustees* based upon the argument that they are no longer a “party” to the probate court proceedings after their application to create a park district was granted in 1984. This is a meritless argument because it ignores the undisputed fact that the Township Trustees *are parties to the 1984 Judgment Entry* that was entered on their behalf. As a party to the original 1984 Judgment Entry who voluntarily invoked the Probate Court’s jurisdiction to create the Park District under R.C. Chapter 1545, therefore, the Township Trustees cannot legitimately argue that they are not bound by the terms of the 1984 Judgment Entry that was entered at their request. Accordingly, as parties to the 1984 Judgment Entry who initiated and participated in the underlying probate court proceedings, the Township Trustees clearly are subject to the Probate Court’s continuing jurisdiction to enforce its original judgment entry, and any alleged errors relating to whether the trial court properly determined or exercised its jurisdiction are errors that may be remedied, if necessary, via a post-judgment appeal, not an extraordinary writ. *Lingo*, 138 Ohio St.3d 427, 2014-Ohio-1052, 7 N.E.3d 1188, at ¶ 41; *State ex rel. Obojski*, 113 Ohio St.3d 486, 2007-Ohio-2453, 866 N.E.2d 1070, at ¶ 22.

III. Proposition of Law #3: The Probate Court Has Broad Discretion To Decide How To Assess The Costs Associated With The Appointment Of A Master Commissioner.

This Court also should reject the Township’s argument that the Probate Court lacks the subject matter jurisdiction to determine how to apportion the costs associated with the appointment of the Master Commissioner under R.C. 2101.06 and R.C. 2101.07. As previously discussed, R.C. 2101.07 grants the probate court with the statutory authority to pay “the commissioner those fees that are allowed to other officers for similar services,” and to “tax those

fees with the costs.” *Id.* Moreover, as to the apportionment of costs, Civ. R. 54(D) provides that “[e]xcept when express provision therefor is made either in a statute or in these rules, costs shall be allowed to the prevailing party *unless the court otherwise directs.*” *Id.* (emphasis added). Thus, as this Court has held, it is well-established that “the court has discretion as to how the costs of an action shall be assessed,” including the costs associated with the appointment of a special master commissioner. *See State ex rel. Estate of Hards v. Klammer*, 110 Ohio St.3d 104, 2006-Ohio-3670, 850 N.E.2d 1197, ¶ 14 (citing *State ex rel. Fant v. Reg. Transit Auth.*, 48 Ohio St.3d 39, 548 N.E.2d 240 (1990)).

This 2006 Supreme Court decision is fully applicable to this case and should be followed by this Court. Here, as in *Klammer*, the Probate Court “has the discretion as to how to assess the costs” of the special master commissioner. *Id.*, 110 Ohio St.3d 104, 2006-Ohio-3670, 850 N.E.2d 1197, at ¶ 14. Indeed, to the extent that the Township believes that the Probate Court abuses its discretion in how it assesses the costs associated with the special master commissioner’s fees, then the Township’s remedy would be to file a timely appeal to the Eleventh District Court of Appeals once the final amount of costs has been fully determined and apportioned. *See, e.g., Madey v. Madey*, 11th Dist. No. 861, 1979 WL 208079, *4 (Apr. 16, 1979) (applying an abuse of discretion standard of review to the trial court’s apportionment of a special master’s costs). Thus, as in *Klammer*, this Court should deny a writ of prohibition because it clearly would be improper to grant an extraordinary writ in order to correct an alleged abuse of discretion. *Id.*, 110 Ohio St.3d 104, 2006-Ohio-3670, 850 N.E.2d 1197, at ¶ 14 (“any error by Judge Klammer [in the assessment of costs] is, at best, an error in the exercise of jurisdiction rather than a want of jurisdiction”).

CONCLUSION

For these reasons, Respondent, The Honorable Timothy J. Grendell, Judge of the Geauga County Court of Common Pleas, Probate Division, respectfully requests that the Court deny the Relators' complaint for writ of prohibition and dismiss this original action with prejudice.

Respectfully submitted,

s/ Stephen W. Funk

Stephen W. Funk* (0058506)

**Counsel of Record*

ROETZEL & ANDRESS, LPA

222 S. Main Street, Suite 400

Akron, Ohio 44308

Telephone: 330.376.2700

Facsimile: 330.376.4577

E-Mail: sfunk@ralaw.com

*Attorneys for Respondent Hon. Timothy J.
Grendell, Judge of Geauga County Court of
Common Pleas, Probate Division*

PROOF OF SERVICE

A copy of the foregoing *Merit Brief of Respondent* was served on this 1st day of July, 2015, via first class mail pursuant to Civ. R. 5(B)(2)(c) upon the following counsel of record:

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
E-Mail: 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.*

William J. Seitz, III* (0011745)
Bryan E. Pacheco (0068189)
**Counsel of Record*
Dinsmore & Shohl, LLP
255 E. Fifth Street, Suite 1900
Cincinnati, Ohio 45202
Telephone: 513.977.8303
Facsimile: 513.977.8141
E-Mail: william.seitz@dinsmore.com

*Counsel of Record for Amici
Ohio Probate Court Judges*

James Gillette* (0015995)
**Counsel of Record*
City of Chardon
117 South Street, Suite 208
Chardon, Ohio 44024
Telephone: 440.286.2669
Facsimile: 440.286.1206
E-Mail: jimgillette49@aol.com

*Counsel of Record for Amicus
Chester Township Park District*

/s/ Stephen W. Funk
Stephen W. Funk (0058506)