Supreme Court of Ohio Clerk of Court - Filed July 15, 2015 - Case No. 2015-0604

IN THE SUPREME COURT OF OHIO
CASE NO.: 2015-0604

Original Action for Writ of Prohibition

STATE OF OHIO ex rel. CHESTER TOWNSHIP
and the CHESTER TOWNSHIP TRUSTEES
MICHAEL J. PETRUZIELLO, BUD KINNEY,
and KEN RADTKE, JR.

Relators

vs.

HONORABLE TIMOTHY J. GRENDELL, JUDGE
GEAUGA COUNTY COURT OF COMMON PLEAS,
PROBATE DIVISION

Respondent

RELATORS CHESTER TOWNSHIP AND THE CHESTER TOWNSHIP TRUSTEES MICHAEL J. PETRUZIELLO, BUD KINNEY, AND KEN RADTKE, JR.'S REPLY BRIEF

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I. INTRODUCTION

The Relators Chester Township Trustees bring this prohibition action after Respondent Probate Court Judge Timothy Grendell improperly exercised subject-matter jurisdiction and took action against the Relators, whose predecessors merely applied to create a park district under Revised Code Chapter 1545.02 more than three decades ago.

The Respondent justifies his improper exercise of jurisdiction by disregarding the unequivocal language of Chapter 1545, which provides no authority for a probate court to exercise subject-matter jurisdiction over a Chapter 1545 applicant (here, the Trustees) after the application to create the park had been granted – in this case, 30 years ago. The Respondent knows – as do amici – there is no statutory authority that gives the Probate Court the limitless power that Respondent seeks over a Chapter 1545 applicant. In fact, after the application to create a park district is filed, Chapter 1545 gives a probate court no jurisdiction over the applicant (i.e., the Chester Township Trustees).

Respondent bases his actions on his mistaken conception of "inherent authority." In sum, Respondent believes that the Legislature must expressly limit his power, or else he has "inherent authority" to do whatever he wants. But this turns the law on its head. Courts simply cannot interpret the grant of plenary or inherent powers to enlarge the statutory grant of jurisdiction to the probate division. The only matters within the Probate Court's jurisdiction in this case are those set forth by Chapter 1545. Granted, probate courts have plenary power under R.C. 2101.24(C)[1] as to matters that are properly before the probate court. But, only the matters enumerated in Chapter 1545 are "properly before the [probate] court" in this case. *State ex rel. Goldberg v. Mahoning Cty.*

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[1] "[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." (Emphasis added.) R.C. 2101.24(C).

Probate Court, 93 Ohio St. 3d 160, 162, 753 N.E.2d 192, 196 (2001)("Probate courts are courts of limited jurisdiction, and probate proceedings are consequently restricted to actions permitted by statute and the Ohio Constitution."). Respondent cannot impose jurisdiction over the "applicant" (i.e., the Trustees) because the Trustees are no longer applicants and the probate court has no authority over the applicant because the application had been granted more than three decades ago.

The Respondent's unlawful exercise of jurisdiction over the Relators Chester Township Trustees is fundamentally wrong and must be corrected. The Legislature did not give the Respondent the ability to force an applicant to "adequately fund" a park district under Chapter 1545, or to pay for the Probate Court's examination of the conduct of the **Park District Commissioners**, not the Relators, that the Probate Court itself appointed. The Respondent's radical assertion of power over an independent political subdivision would allow the Respondent to fund the Park District to any extent he pleases – imposing the duty to pay for whatever he deems "adequate" on Chester Township. If the Probate Court is allowed to do this, it would lead to complications too obvious and too numerous to recite. Moreover, the Legislature gave no hint – let alone statutory authorization – for this power, or for that matter any power over a Chapter 1545 applicant whose application was granted. Furthermore, the Respondent at any time could force the Township – again, a completely separate entity from the Park District – to pay tens of thousands of dollars for the Probate Court's Master Commissioner who is investigating the conduct of the Park District's Commissioners, which the Probate Court itself appointed and can remove. And, the Respondent, under his incorrect view, could do so time and time again – all at the expense of Chester Township, an entity that he has no jurisdiction over and which was merely a Chapter 1545 applicant whose application had been granted.

To be clear, this prohibition action is not about whether the Probate Court has some authority over the Park District, or the amount of the Master Commissioner's fees, or the amount of funding the Respondent believes the Park District should have. This prohibition action is about the Respondent's patent and unambiguous lack of subject-matter jurisdiction over a Chapter 1545 applicant (in this case, the Township Trustees) after the granting of the application to create the park district.

This Court should issue a writ of prohibition to correct the results of the Respondent's unauthorized exercise of jurisdiction by vacating the jurisdictionally unauthorized order as to the Chester Township Trustees. Furthermore, to prevent any future unauthorized exercise of jurisdiction over Relators and other Chapter 1545 applicants, a writ is necessary to correct the Respondent's misunderstanding of his limited statutory jurisdiction as to Chapter 1545 applicants.

II. LAW AND ANALYSIS

<u>Proposition of Law I</u>: The Respondent Probate Court Judge Timothy Grendell patently and unambiguously lacks jurisdiction over the Relators-Chester Township Trustees.

A. A probate court is a court of limited and special jurisdiction and can only exercise jurisdiction/power that the general assembly has expressly conferred by statute.

The Respondent unambiguously and patently acted without subject-matter jurisdiction when he took action against the Relators Chester Township Trustees. Respondent's power over the Park District comes from Revised Code Chapter 1545. But that Chapter patently and unambiguously does **<u>not</u>** grant the Probate Court any power to impose a duty on the *applicant* (in this case, the Township) after the application had been granted. A probate court's subject-matter jurisdiction over a Chapter 1545 applicant is outlined in R.C. 1545.01-04 and provides the procedure for an applicant to apply to create the park district. The probate court's jurisdiction over

the applicant is limited to the application process. *See* R.C. 1545.01-04; *see* generally Chapter 1545.

In rendering his conclusions of law and in the absence of any jurisdiction, the Respondent improperly ordered Chester Township – a political subdivision completely separate from the Park District – to "adequately" fund the Park District. The Probate Court held that Chester Township has **"a duty to assure that <u>adequate</u> dedicated funds are made available to the Park District to perform the Park District's statutory duties**." (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at "Conclusion of Law" ¶ 6; Joint Evid. at 107.)

The Respondent then improperly ordered the Township to pay 75% of the cost for the Probate Court's examination of the conduct of the Park District Commissioners that the Probate Court itself appointed.

> The cost of the Master Commissioner shall be borne 75% by the Chester Township/Chester Park District and 25% by the Court pursuant to its responsibilities under O.R.C. Chapter 1545.

(Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at "Conclusion of Law" ¶ 13; Joint Evid. at 109.) Later, the Respondent asserted he was "firmly of the belief" that he could impose the duty to pay **all** of the Master Commissioner's fees on the Township, stating that "the costs can be taxed completely to this case as costs." (Transcript of Status Conference 4/28/2015, Joint Evid. at 150-151.)

The Respondent knows – as do amici – that there is no statutory authority that gives the Probate Court the limitless power that he seeks over a Chapter 1545 applicant. In fact, after the application to create a park district is filed, Chapter 1545 gives a probate court no jurisdiction over the applicant – in this case, Chester Township. Respondent bases his actions on a mistaken conception of "inherent authority." In sum, Respondent believes that the Legislature must

expressly limit his power, otherwise he has "inherent authority." But this turns the law on its head. The Respondent's misunderstanding is critical to all of the arguments made by him and amici.

1. The probate court only has plenary power when a matter is properly before the court under the governing statute (Chapter 1545).

The only matters within the Probate Court's jurisdiction in this case are those set forth by Chapter 1545. Granted, as the Respondent and amici point out, probate courts have plenary power under R.C. 2101.24(C)[2]. But, **only the matters enumerated in Chapter 1545** are "properly before the [probate] court" in this case. *State ex rel. Goldberg v. Mahoning Cty. Probate Court*, 93 Ohio St. 3d 160, 162, 753 N.E.2d 192, 196 (2001)("Probate courts are courts of limited jurisdiction, and probate proceedings are consequently restricted to actions permitted by statute and the Ohio Constitution."); *Corron v. Corron*, 40 Ohio St.3d 75, 77, 531 N.E.2d 708 (1988)("Those matters that may be properly placed before the court are enumerated and limited in scope" by statute); *see also, e.g., Oncu v. Bell*, 49 Ohio App.2d 109, 110, 359 N.E.2d 712 (1976). (Courts cannot interpret the statutory grant of plenary powers to enlarge the statutory grant of jurisdiction to the probate division.).

Chapter 1545 does not confer subject-matter jurisdiction on probate courts to order a Chapter 1545 applicant to fund a park district. The Respondent's efforts to exercise continuing subject-matter jurisdiction over an applicant in a Chapter 1545 special proceeding to impose a funding requirement on that applicant has absolutely no basis in the statute. Indeed, after the grant of the application, the Probate Court has no subject-matter jurisdiction at all.

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[2] "[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." R.C. 2101.24(C) (Emphasis added).

The inescapable effect of former probate court Judge Lavrich's granting of the predecessor trustees' 1984 application to create the Park District was to end the proceedings, and thus end the probate court's jurisdiction over the applicant. Respondent in this case cannot invoke the probate court's jurisdiction over the "applicant" (i.e., the Trustees) because **the Trustees are no longer applicants and the probate court has no authority over the applicant because the application has been granted**. This case does not involve any of the probate court's enumerated powers in Chapter 1545, and presents no "matter that is properly before the [probate] court" under R.C. 2101.24(C) that would sanction the exercise of the probate court's plenary power.

The power of a probate court regarding an applicant to create a park district, plenary though it may be in some other circumstances, is strictly limited to matters enumerated in Chapter 1545. To hold otherwise would greatly enlarge the subject-matter jurisdiction of the probate court. Indeed, if the Respondent's position is correct, it would allow him to improperly reach into a separate public entity's resources to fund another public entity, giving Respondent the ability to force the township (or any other 1545 applicant) to pay an amount determined by the Probate Court. If the Probate Court is allowed to do this, it would lead to complications too obvious and too numerous to recite. Moreover, the Legislature gave no hint – let alone statutory authorization – for this power, or any power for that matter over the applicant whose application was granted.

2. The Respondent patently and unambiguously does not have any subject-matter jurisdiction over a Chapter 1545 applicant (the Township Trustees) whose application was granted more than 30 years ago.

During the thirty years after the creation of the Park District, until the Respondent issued his November 26, 2014 order, the Probate Court never tried to exercise jurisdiction over the Township Trustees. Indeed, no Ohio court has ever endorsed – and research reveals no probate court has ever advocated – the expansion of a probate court's subject-matter jurisdiction over a

Chapter 1545 *applicant* after the application had been granted. The reason is simple: The Probate Court is a court of limited jurisdiction, and the Legislature unambiguously and patently did not give this authority to a probate court in Chapter 1545. Under Chapter 1545, the probate court has no authority over the applicant after that application is granted. The proceeding is at its end. This Court will find no statutory authority for the Probate Court to base its subject-matter jurisdiction on. None.

The Respondent argues that he has the right to "determine its own jurisdiction" and that the party challenging the Probate Court's jurisdiction possesses an adequate remedy by appeal. (Respondent's Br. at 19.) That argument is wrong.

This Court has expressly held that the general rule that Respondent alludes to does not apply when the absence of jurisdiction is patent and unambiguous.

> As a general rule, a party seeking a writ of prohibition must establish that denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law. **However, this rule does not apply when the absence of jurisdiction is patent and unambiguous.** " 'Where jurisdiction is patently and unambiguously lacking, relators need not establish the lack of an adequate remedy at law **because the availability of alternate remedies like appeal would be immaterial**.' " [Citations omitted; emphasis added.]

State ex rel. V.K.B. v. Smith, 142 Ohio St. 3d 469, 2015-Ohio-2004, 32 N.E.3d 452, 455 ¶ 9. As demonstrated, the Probate Court patently and unambiguously does not have subject-matter jurisdiction.

The Respondent and amici also make the surprising argument that the Relators are not challenging subject-matter jurisdiction. (Respondent's Br. at 19.) Of course, that is not true. Subject-matter jurisdiction is precisely what this action is about. The Relators have consistently asserted that the Respondent unambiguously lacks subject matter jurisdiction over the Relators Chester Township Trustees. Subject-matter jurisdiction is the power of a court to entertain and

adjudicate a particular class of cases. *Morrison v. Steiner*, 32 Ohio St.2d 86, 87, 290 N.E.2d 841 (1972). A court's subject-matter jurisdiction is determined without regard to the rights of the individual parties involved in a particular case. *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 75, 701 N.E.2d 1002 (1998).

To be clear, the Probate Court cannot adjudicate the class of cases that involves an applicant (i.e., the Trustees) in a Chapter 1545 proceeding after the Probate Court had granted the application. This determination has nothing to do with the rights of particular parties. The unique characteristic of the Chapter 1545 proceeding is that a new, separate public entity is created upon a probate court's grant of that application. Moreover, if the Legislature wanted to provide the Probate Court with ongoing jurisdiction over the applicant, it certainly would have. Indeed, based on the dramatic, unprecedented power such jurisdiction would give a probate court over a Chapter 1545 applicant, it would be fantastic to believe that the Legislature wanted to grant it but just left it out of the statute. The Legislature obviously never intended to grant this subject-matter jurisdiction to the probate court.

Nevertheless, Respondent theorizes that this case is really about personal jurisdiction[3] and that the Relators are merely quibbling about the extent of what it claims is the "remedy" that it fashioned. (Respondent's Br. at 20-22.) As demonstrated, this case is about the Respondent's unambiguous and patent lack of subject-matter jurisdiction. This case is not about the extent or

[3] Viewed in the way Respondent chooses to characterize this case, the lack of personal jurisdiction would also seem to be extraordinary and warrant prohibition. The Chester Trustees in this case merely voluntarily assisted the master commissioner by providing information. Then, in an order that came as a complete surprise to the Chester Trustees, the Respondent imposed on the Township a duty to "adequately" fund the Park District and pay for the master commissioner's fees. The Respondent essentially took the role as the plaintiff for the Park District, even though the Park District never sued, and even though it was the Respondent who would decide the issue -- an action that violates any notion of procedural due process or having an impartial decision maker.

type of "remedy" the Respondent imposed or plans to impose on the Chester Trustees; rather, it is about the Respondent's patent and unambiguous lack of subject-matter jurisdiction to impose *any* type of "remedy" against a Chapter 1545 applicant whose application had been granted.

Respondent argues that he has not issued an order commanding the Township Trustees to pay "a specific sum" to the Park District or a specific sum to the master commissioner. (Respondent's Br. at 22.) This is irrelevant to this prohibition action, which merely requires that the exercise of judicial power or quasi-judicial power is unauthorized by law. *State ex rel. Brady v. Pianka*, 106 Ohio St.3d 147, 2005-Ohio-4015, 832 N.E.2d 1202 at ¶ 7. The Respondent inarguably exercised judicial power when he improperly ordered without valid authority or jurisdiction that the Relators Chester Township Trustees (who are mere Chapter 1545 applicants) have "a duty to assure that adequate dedicated funds are made available to the Park District to perform the Park District's statutory duties" 30 years after the creation of the Park District, which is a separate legal entity, and to pay the Master Commissioner's fees. (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at ¶ 6; Joint Evid. at 107.) Respondent also argues that the Trustees' Eleventh District appeal somehow interferes with this prohibition action. (Respondent's Brief at 23.) This is flat wrong. The law is clear where a respondent patently and unambiguously lacks jurisdiction, a relator "'need not establish the lack of an adequate remedy at law because the availability of **alternate remedies like appeal would be immaterial**. '" *State ex rel. Duke Energy Ohio, Inc. v. Hamilton Cty. Court*, 126 Ohio St. 3d 41, 2010-Ohio-2450, 930 N.E.2d 299, ¶ 17. (Emphasis added).

Simply put, there is no statutory source of jurisdiction, a point that the Respondent and amici admit through silence on the subject.[4] The Probate Court patently and unambiguously does not have subject-matter jurisdiction over a Chapter 1545 applicant (the Township Trustees) whose application was granted more than 30 years ago.

3. The Respondent does not have "inherent authority" over a Chapter 1545 applicant, whose application had been granted.

Respondent's inherent-authority argument is based on R.C. 2101.24(C), which provides that "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." (Respondent's Brief at 23-24.) But the critical language in that provision is "any matter that is properly before the court."

The Respondent's "inherent-authority" argument does not create power that does not statutorily exist. Ohio case law is consistent that while the powers of the probate court are plenary, they are so only with respect to matters "properly before the court." See *State ex rel. Goldberg, supra*, 93 Ohio St. 3d 160, 162, 753 N.E.2d 192, 196 (2001)("Probate courts are courts of limited jurisdiction, and **probate proceedings are consequently restricted to actions permitted by statute** and the Ohio Constitution.") (emphasis added); *Corron, supra,* 40 Ohio St.3d at 77 ("Those matters that may be properly placed before the court are enumerated and limited in scope" by

[4] The amici in this case largely reiterate the position of the Respondent. What the amici, or the respondent, do not and cannot do is identify any statutory provision that establishes a probate court's subject-matter jurisdiction over an applicant to a Chapter 1545 proceeding in which the application had been granted. For instance, the amici claim "unquestionably" the probate court has jurisdiction over the underlying subject matter. (Probate Judges Amici at 6.) But rather than relying on statutory authority, amici and the Respondent are relegated to reciting the authority a probate court has over a park district, not the applicant (i.e., in this case the Township Trustees). Likewise, the various cases cited by Respondent and amici offer no support that a provision of Chapter 1545 invests a probate court with subject-matter jurisdiction to take action against an applicant to a Chapter 1545 proceeding after the application has been granted.

statute); see also e.g., *Oncu, supra,* 49 Ohio App.2d at 110. (Courts cannot interpret the statutory grant of plenary powers to enlarge the statutory grant of jurisdiction to the probate division.)[5]. Respondent and amici repeatedly state the probate court's power is broad and that the Relators must demonstrate that the Probate Court's claimed power is "expressly otherwise limited or denied by a section of the Revised Code." But again, the subject matter or source of that power must be properly before the Court in the first place. Otherwise that power would be virtually limitless.

Respondent argues that he has authority over the Park District to perform certain statutorily authorized duties, such as appointing and removing Park District commissioners and approving donations. (Respondent's Br. at 25.) From this indisputable authority, which actually **is** delineated in Chapter 1545, Respondent theorizes that this somehow gives him "inherent authority" to impose a duty to fund the Park District on a Chapter 1545 applicant (i.e., the Trustees). This is a power that **is not** set forth in the statute. Again, after granting a Chapter 1545 application, the Probate Court has no subject-matter jurisdiction at all to take action against a Chapter 1545 applicant.

The Respondent incorrectly views the issue as whether his power to impose a funding requirement on a Chapter 1545 applicant "is expressly 'limited or denied by a section of the Ohio Revised Code.'" (Respondent's Br. at 25.)

This turns the governing law on its head. In sum, the Respondent refuses to acknowledge or recognize:

- "[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); *see In re Guardianship of Spangler*, 126 Ohio St. 3d 339, 2010-Ohio-2471, 933 N.E.2d 1067, ¶ 17(A creature of statute obtains jurisdiction only

[5] Ohio courts are uniform on this point. *See Roll v. Edwards,* 156 Ohio App. 3d 227, 233, 2004-Ohio-767, 805 N.E.2d 162 (4th Dist.)("While the powers of the probate court are plenary, they are so only with respect to matters "properly before the court.'"); *see Madigan v. Dollar Bldg. & Loan Co*., 52 Ohio App. 553, 4 N.E.2d 68 (2nd Dist., 1935).

by express statutory grant and that any doubt as to the extent of the grant must be resolved against it.)

- It is improper to justify a court's exercise of jurisdiction by stating that nothing would specifically preclude it from doing so; instead, an express statutory grant of jurisdiction must be identified. *See In re Guardianship of Spangler* at ¶ 42 (holding that authority must be granted to a creature of statute and that "the absence of a limitation on the [tribunal's] authority does not determine the question.")

- If the Ohio Legislature wanted to give authority to the Probate Court to impose funding requirements and to impose fees of a master commissioner on an applicant in a Chapter 1545 special proceeding, the Legislature undoubtedly would have. Courts cannot ignore the terms of a statute **or** "insert a provision not incorporated by the legislature." *Akron v. Rowland*, 67 Ohio St.3d 374, 380, 618 N.E.2d 138 (1993). *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 455 (1999)(the "wisdom of legislation is beyond the purview of the courts.")

Respondent believes that he is "enforcing the terms of the 1984 judgment entry, which created the park district as a separate political subdivision" (Respondent's Br. at 26) and this somehow gives him the unfettered "inherent authority" to impose a duty on a Chapter 1545 applicant (i.e., the Township Trustees) to fund the Park District – in this case, 30 years after the probate court had created the park district as a separate entity.

This is wrong.

The 1984 judgment entry has already been "enforced," using Respondent's term. That is, then-Geauga County Probate Court Judge Frank Lavrich "enforced" the order in 1984 when he granted the Chester Trustees' application and created the Chester Township Park District under R.C. 1545.02. (Judgment Entry of May 10, 1984; Joint Evid. 016.) When it did so, the Probate Court created a new "body politic and corporate with full authority and subject to such limitations as provided by law." (*Id.*) The Park District is a separate legal entity distinct from Chester Township/Chester Township Trustees. The Respondent is not enforcing that order by interjecting itself into the funding of the park district by invading the province of a separate public entity's finances. This would be contrary to the very notion that the park district is a separate public entity,

which has the power and duty to fund itself (R.C. 1545.11; R.C. 1545.20, etc.) and govern. The Park District and the Township are two separate and distinct legal entities. (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at pages 3-4; Joint Evid. at 105-106.) In sum, despite this exceedingly strained argument to stretch the concept of "inherent authority" beyond what is proper, the Legislature simply did not authorize the expansive view of jurisdiction that Respondent argues.

The Probate Court's authority over 1545 park districts cannot somehow be transmogrified into authority to compel a 1545 applicant like the Relators to "adequately" fund a park district (or to fund the Master Commissioner's review of the Park District's Commissioners' conduct). The Respondent relies on *State ex rel Lewis v. Moser*, 72 Ohio St.3d 25, 647 N.E.2d 155 (1995). (Respondent's Br. at 24.) *Moser* does not support the Respondent's "inherent authority" argument. In *Moser*, this Court rejected a challenge to the probate court's jurisdiction to decide a claim for breach of fiduciary duties, even though the relator sought monetary damages. *Moser* found that a claim for breach of a fiduciary duty, which inexorably implicates control over the conduct of fiduciaries, are within the subject-matter jurisdiction of the probate court by virtue of R.C. 2101.24(A)(1)(c) and (e). The *Moser* court found that the broad grant of authority to fully resolve matters properly before it included the power to award monetary damages. *Moser* is distinguishable from the present case. Unlike the present case, R.C. 2101.24(A)(1)(e) and (e) expressly gave the probate court subject-matter jurisdiction to control the conduct of guardians and to settle their accounts. In the present case, no provision gives subject-matter jurisdiction over a Chapter 1545 applicant after the creation of the park district to impose a funding requirement of the park district – an issue having nothing to do with the application. The Probate Court improperly relied on the fact that the predecessor trustees were applicants three decades ago – an application

that was granted, thus ending the proceeding and creating a park district – to exercise subject-matter jurisdiction when it patently and unambiguously does not exist. The present case bears no resemblance to the *Moser* case.

While it is true that the Township Trustees made the original application 30 years ago, that proceeding ended upon the Probate Court's grant of the application. Indeed, the case was closed as to the applicant Chester Trustees. Chapter 1545 does not provide any other authority over an applicant – i.e., in this case the Chester Township Trustees. The Respondent apparently views the case as perpetually open since 1984 when the application was filed. But, Chapter 1545 does not give the Probate Court ongoing authority or jurisdiction over applicants who request the creation of a park district. See generally Chapter 1545. The Probate Court merely had the authority to approve or deny the application. See R.C. 1545.02; R.C. 1545.03; R.C. 1545.04. See generally Chapter 1545. While the Probate Court over the years used the 1984 case to log its orders regarding approving or removing Park District commissioners, as well as recommendation letters for potential candidates, and newspaper articles (Docket Sheet, Joint Evid. at 002), the 1984 special proceeding provides no basis for the Respondent's belief he has infinite jurisdiction over the Relators-Chester Township Trustees to fund the Park District or otherwise.

The Respondent believes he may direct the discretionary funding decisions of Chester Township, a separate public entity from the Park District, and contends without this power "the judicial edifice would fall." (Respondent's Brief at 27.) There is absolutely no risk of "the judicial edifice" falling by being constrained to its proper role. Indeed, the real risk is the unlimited power the Probate Court seeks over a separate public entity. A risk that is so critical that the Township was left no choice but to file this prohibition action. If the Probate Court is permitted to base its jurisdiction on its belief that it can use "inherent" authority instead of what is expressly conferred

by statute, or on tenuous implications rather than express statutory language, it is unclear what other unauthorized actions the Probate Court might take in the future.

4. The Respondent patently and unambiguously does not have subject-matter jurisdiction to impose the costs of the master commissioner on a Chapter 1545 applicant (the Township Trustees) whose application was granted more than 30 years ago.

The Respondent and his amici attempt to characterize this issue as a discretionary matter of apportioning costs, that is not suitable for a prohibition action. (Respondent's Br. at 28-29.)

This is wrong.

There is no authority to tax costs on a Chapter 1545 applicant after the probate court granted the application. Like his effort to impose a continuing funding requirement on an applicant of a Chapter 1545 proceeding, Respondent patently and unambiguously lacks subject-matter jurisdiction to "tax" as "costs" his use of a master commissioner three decades after the Probate Court had granted the application to create the Park District. As demonstrated, the Probate Court does not have jurisdiction over the Chester Township Trustees and therefore it cannot impose "costs." The Chapter 1545 proceeding ended thirty years ago. The Respondent's apparent "re-opening" of the case to appoint a master commissioner does not allow him to impose tens of thousands of dollars in fees to inquire about an issue that is unrelated to the long-ago-ended application process. R.C. 1545.02; R.C. 1545.03; R.C. 1545.04. Indeed, the Respondent is using the master commissioner to review the conduct of the Park District Commissioners the Probate Court itself appointed.

Respondent and amici rely on *State ex rel. Hards v. Klammer*, 110 Ohio St.3d 104, 2006-Ohio-3670, 850 N.E.2d 1197. (Respondent's Br. at 29.) *Klammer* does not support this extreme position. *Klammer* involved an appeal from a judgment dismissing a complaint for a writ of prohibition that sought to prevent a probate judge from awarding and paying fees to a master

commissioner from the guardianship estate. The former guardian-daughter of the ward filed a complaint for the writ of prohibition to prevent the payment of such fees and the appellate court dismissed the complaint. In affirming, this Court held in pertinent part that, under R.C. 2101.24(A)(1)(e), the trial court did not patently and unambiguously lack jurisdiction to resolve the issue of such fees from the guardianship estate.

Klammer is factually and legally distinguishable. Unlike the present case, R.C. 2101.24(A)(1)(e) expressly gave the probate court subject matter jurisdiction to control the conduct of guardians and to settle their accounts. Here, no provision gives subject matter jurisdiction over a Chapter 1545 applicant after the creation of the park district for fees that have nothing to do with the application. The Probate Court improperly relied on the fact that the predecessor trustees were applicants three decades ago – an application that was granted, thus ending the proceeding and creating a park district – to exercise subject matter jurisdiction when it patently and unambiguously does not exist. The present case bears no resemblance to *Klammer*.

Respondent relies on R.C. 2101.06, which provides: "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. [emphasis added]"

But, there is no "matter pending" as to the Township Trustees. The Township Trustees' application ended when the Probate Court granted that application and created a separate public entity (i.e., the Park District). At that point, the special statutory proceeding to create the Park District was closed as to the Relators Chester Township Trustees. As further explained in the Relators' merits brief, there would be nothing left to do because Chapter 1545 only provides that a probate court may accept the applicant's – in this case Chester Township's – application, review it, and approve or deny it. R.C. 1545.02; R.C. 1545.03; R.C. 1545.04.

Again, the Probate Court does not have authority over an **applicant** to force funding requirements or to force payment of the costs of a master commissioner to examine the conduct of the Park District Commissioners, which the Probate Court itself appointed. If that were the case – which it is not – then a probate court could impose those same funding requirements directly over the voters, who are also able to apply to create a park district under Chapter 1545. See R.C. § 1545.02 (allowing the application to be "signed by a majority of the electors" as well as by county commissioners, township trustees, etc.). The parties do not dispute that the "costs" that the Respondent seeks to impose on the Trustees – first at 75% and then later 100% – are not costs related to the application, or the hearing on that application 30 years ago in 1984. (See generally R.C. 1545.02; R.C. 1545.03; R.C. 1545.04.) These "costs" are from the Respondent's use of a master commissioner in 2014 to review the conduct of the Park District commissioners that the Probate Court itself appointed thirty years after the creation of the Park District.

The Park District in its amicus brief argues that a Chapter 1545 applicant (i.e., the Township) is a continuing party after the application had been granted. (Park District Amicus Br. at 15.) The Park District mistakenly supports this contention by arguing that the *R.C. 1545.02 applicant* (i.e., the Trustees in this case) has rights to dissolve the park district that a "non-party" would not have under R.C. 1545.35. (*Id.*) But, that is not correct. The Park District's citations to the dissolution provisions actually firmly supports that a probate court does not have subject-matter jurisdiction over a R.C. 1545.02 applicant after the application had been granted. The dissolution provisions actually creates a separate proceeding to dissolve the park district. See R.C. 1545.35 to 1545.40. The *R.C. 1545.02 applicant* is not given any special rights to apply to dissolve a park district under R.C. 1545.35, which makes perfect sense because the Park District is a separate

political subdivision. Moreover, despite the Park District's argument, R.C. 1545.35 does not impose or even suggest party status on a *R.C. 1545.02 applicant*.

Finally, under the Probate Court's erroneous position, the Probate Court could at any time, or times, appoint a master commissioner to review the conduct of park district commissioners that the Probate Court itself appointed, and then force the R.C. 1545.02 applicant – in this case Chester Township – to pay tens of thousands of dollars for that review. The Probate Court – again under its position – could obtain that money time and time again from whoever the applicant was, even if the applicant had its application granted decades ago.

The Respondent's claim that he has discretion under these circumstances is wrong. Respondent simply does not have subject-matter jurisdiction.

Generally speaking, Respondents do not dispute the Probate Court can appoint a master commissioner in its proceedings, but the cost of a master commissioner cannot be imposed on an applicant whose involvement terminated upon the granting of the application more than 30 years ago. Just because the applicant, the Trustees in this case, cooperates with a master commissioner's investigation,[6] or pays deference to a probate court that is trying to get information about a park district, does not grant the Probate Court the authority to impose costs on a separate entity.

III. CONCLUSION

The Probate Court has infringed upon the Township's right to govern and protect its discretionary funding. The Probate Court has taken the extraordinary position that it may exercise

[6] Even without voluntary cooperation, the master commissioner could otherwise "summon and enforce the attendance of witnesses" and "compel the production of books and papers" under R.C. 2101.07. While both the Respondent and strangely the Probate Court amici, seem to use the voluntary cooperation of the Trustees to make them subject to the Probate Court's orders, there is nothing remarkable about this cooperation and certainly nothing that creates subject-matter jurisdiction where none exists.

"inherent authority" over the Relators Chester Trustees even in the complete absence of statutory authorization. On the Probate Court's mere belief, the Relators were forced to defend the autonomy of the Township before the Respondent, even though the Respondent patently and unambiguously lacked any authority over them. The Relators ask that this Court issue a writ of prohibition that vacates and invalidates the actions taken by the Probate Court as to the Trustees and that corrects the Probate Court's misunderstanding of its limited subject-matter jurisdiction to prevent future jurisdictionally unauthorized actions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Reply Brief of Relators was served by depositing same in first-class United States mail, postage prepaid on July 15, 2015 to the following:

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