

IN THE SUPREME COURT OF OHIO

STATE EX REL. ANGELA M. FORD, :
ESQ., : Case No.: 2015-1470
Relator, :
v. : ORIGINAL ACTION IN PROHIBITION AND
HONORABLE ROBERT P. : MANDAMUS
RUEHLMAN, :
Respondent. :

RELATOR ANGELA FORD, ESQ.'S OPPOSITION TO RESPONDENT HONORABLE
ROBERT P. RUEHLMAN'S MOTION FOR JUDGMENT ON THE PLEADINGS

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**RELATOR ANGELA M. FORD, ESQ.'S RESPONSE IN OPPOSITION TO
RESPONDENT HONORABLE ROBERT P. RUEHLMAN'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

I. Introduction

Respondent Robert P. Ruehlman's ("Judge Ruehlman") motion for judgment on the pleadings misunderstands the basis for Relator Angela M. Ford, Esq.'s ("Ms. Ford") Petition to this Court. Ms. Ford did not file this Petition because she fears an adverse or even an incorrect decision from Judge Ruehlman. She does not seek to delay fact finding by Judge Ruehlman. Indeed, this matter has nothing to do with whether Ms. Ford was about to have "her day in court." She filed this Petition because Judge Ruehlman lacks the jurisdiction to entertain arguments and pleadings that attack the validity and enforceability of Kentucky orders and judgments. Permitting this to continue would allow an Ohio Court of Common Pleas judge to act as an appellate court to the Kentucky courts. This cannot occur.

Contrary to Judge Ruehlman's motion, Ms. Ford has not sat idly by for eight months, invoking this Court's jurisdiction only when it appeared she would finally get her hearing. From day one of this lawsuit, Ms. Ford has challenged Judge Ruehlman's jurisdiction to hear this case, as this underlying complaint is nothing more than a collateral attack on a sister state's judgment. Judge Ruehlman's August 26, 2015 order, in which he reached into Kentucky to interfere with not only collection proceedings but also the discovery process, has continued to ensure that Stanley M. Chesley ("Chesley") would not have to pay his judgment creditors by:

- Concluding that Ms. Ford's motion practice in another state's court seeking execution on the judgment violated his restraining orders;
- Ordering Ohio citizens and entities to disregard and not effectuate any Kentucky orders, including but not limited to the Transfer Order, an order issued by the Kentucky court requiring Chesley to transfer his interest in his prior law firm, Waite Schneider Bayless & Chesley Co., L.P.A. ("WSBC") to his judgment creditors; and

- Declaring that his jurisdiction trumped that of the Kentucky court that issued the judgment at issue in the underlying case, and that he in fact had “exclusive authority” to adjudicate the rights of the parties as to the judgment.

For all intents and purposes, any order that Ms. Ford obtained in furtherance of collecting the judgment against Chesley has been blocked by Judge Ruehlman. Indeed, everything that Chesley has argued in Ohio, he has previously argued in Kentucky—and he has received the opposite result from Judge Ruehlman.

Event	Result in Kentucky	Result in Ohio
Chesley filed post-judgment motions, including a motion to vacate the judgment under CR 60.02, arguing that the judgment failed to identify the judgment creditors and the amounts awarded to each	Fall 2014: Motions denied; judgment valid and enforceable	January 2015: Chesley receives an ex parte temporary restraining order enjoining domestication of the final judgment.
Ms. Ford, on behalf of her clients, moves to transfer Chesley’s beneficial interest in WSBC to the judgment creditors	June 23, 2015: Granted	August 26, 2015: Judge Ruehlman orders Ohio entities and individuals to disregard requests from Chesley to effectuate the Kentucky orders
Ms. Ford moves to compel Chesley to provide information through discovery	June 23, 2015: Granted	August 26, 2015: Judge Ruehlman finds that Ms. Ford’s actions violate his orders, purportedly extending the reach of his orders into Kentucky.
Chesley does not post a supersedeas bond	Collection can proceed.	January 2015: Chesley is not required to post any security for the injunction against domestication.

Judge Ruehlman contends that he has jurisdiction over this case. Yet he continues to interfere with valid and enforceable orders issued by the Kentucky trial court. He continues to entertain a complaint against Ms. Ford when she has no legal interest that is adverse to Chesley—the very definition of a nonjusticiable controversy, and when the complaint asserts no legal cause of action against either Ms. Ford or his judgment creditors. Without a justiciable controversy to adjudicate, Judge Ruehlman has no jurisdiction to issue a decision on the matter. Article IV of the Ohio Constitution forbids it.

Similarly, Judge Ruehlman has no jurisdiction to block the judgment creditors from remedies available to them under Ohio statutory law, which is exactly what he has done by enjoining domestication of the judgment. *See State, ex rel. Celeste, Governor v. Smith, Judge*, 17 Ohio St.3d 163, 478 N.E.2d 763 (1985) (granting a writ when a temporary restraining order precluded relators from pursuing exclusive statutorily prescribed remedies). Ohio Revised Code 2329 *et seq.* guides enforcement of a foreign judgment, and it provides that a foreign judgment can be filed and then enforced under Ohio law. It requires no prequalifications or pre-exchange of information. But Judge Ruehlman has unilaterally removed this avenue of enforcement from the judgment creditors by enjoining them, Ms. Ford, and all Ohio lawyers from making any filing that is part of domesticating the judgment. Judge Ruehlman has no jurisdiction to take this action. Nor has he, as he has suggested, identified in any of his orders what steps Ms. Ford must follow in order to be permitted to domesticate the judgment.

Although Judge Ruehlman contends that he has been gathering the relevant facts in preparation for an injunction hearing, in truth, he has only Chesley's verified filings. He has not yet held any evidentiary hearings or received any evidence from Ms. Ford. Despite this, he has made factual findings—over Ms. Ford's objections. Yet in his Answer to Ms. Ford's Petition, he has denied for want of knowledge many of the facts he has found to support his orders. (*See Respondent's Answer at ¶¶ 6-9, 12-14*).

Based on the allegations asserted in the Petition, and the facts underlying this proceeding, Judge Ruehlman's motion for judgment on the pleadings should be denied. And, given the fact that he has not answered many of the issues central to this case, this Court should grant Ms. Ford's Petition.

II. Argument

A. An Ohio Court Cannot Exercise Jurisdiction Over a Complaint that Attacks a Sister State Court's Judgment.

The Ohio Constitution grants a court of common pleas judge limited jurisdiction. For example, a common pleas judge can hear only justiciable controversies. Here, no justiciable controversy exists because the parties to the underlying matter do not have adverse legal interests and because the underlying complaint fails to assert a cause of action. Furthermore, the Ohio Constitution does not grant a judge jurisdiction to interfere with statutory remedies, such as domestication—or to nullify a sister state court's order. For those reasons, Judge Ruehlman is without jurisdiction to entertain this case, and Ms. Ford's Petition should be granted.

1. The underlying matter fails to present a justiciable controversy and so a court of common pleas lacks jurisdiction over the matter.

Judge Ruehlman's motion does not address two key facts that render Ms. Ford entitled to relief. First, it does not identify any legal interest of Ms. Ford that is adverse to Chesley. Indeed, Judge Ruehlman's motion states only that "there is a dispute between Chesley and Ford over the collection of assets located in Ohio to settle a judgment obtained in Kentucky." (Motion at 6-7). But this statement does not identify any legal interest of Ms. Ford that is at issue in the underlying case.

Courts of common pleas can only "decide actual controversies between parties legitimately affected by specific facts and render judgments which can be carried into effect." *State ex rel. Barclays Bank PLC v. Hamilton County Court of Common Pleas*, 74 Ohio St.3d 536, 542, 660 N.E.2d 458 (1996). For an actual controversy to exist, the parties must be adverse to each other. This Court has noted that "[t]his means not merely a party in sharp and acrimonious disagreement with the plaintiff, but a party from whose adverse conduct or adverse

property interest the plaintiff properly claims the protection of the law.” *Id.* This Court further explained “the presence of a disagreement, however sharp and acrimonious it may be, is insufficient to create an actual controversy if the parties to the action do not have adverse legal interests.” *Id.*

Not only does Ms. Ford lack any adverse legal interest against Chesley, but in the realm of this complaint, so do the judgment creditors. The Kentucky court has already issued the judgment against Chesley. This judgment cannot be relitigated. So, Chesley can only take issue with the execution of the judgment. But the judgment creditors cannot come to Ohio to domesticate the judgment because they have been restrained by Judge Ruehlman’s order.

Judge Ruehlman also does not acknowledge that the underlying complaint asserts no cause of action against either Ms. Ford or the judgment creditors. The complaint fails to identify a single tort, contract, or statute that either Ms. Ford or the judgment creditors have violated. And Judge Ruehlman’s motion does not offer any explanation as to the cause of action at issue in this complaint. A complaint that fails to assert a legal cause of action against another does not present a justiciable controversy for resolution. And, a declaratory judgment action is not a proper vehicle to challenge the merits of a judgment already issued. *See Lingo v. State of Ohio*, 138 Ohio St.3d 427, 2014-Ohio-1052, 7 N.E.3d 1188, ¶ 44 (noting that “a declaratory judgment is not a proper vehicle for determining whether rights that were previously adjudicated were properly adjudicated”).

Accordingly, there is no justiciable controversy that Judge Ruehlman can adjudicate. As such, he has no jurisdiction pursuant to Article IV of the Ohio Constitution to entertain this matter. This Court should grant Ms. Ford’s Petition and dismiss the underlying complaint.

2. There is no authority that a court has jurisdiction to prohibit domestication of a foreign judgment or to order Ohio entities not to comply with valid Kentucky orders.

Judge Ruehlman insists that an Ohio court has the jurisdiction “to determine whether or not Ohio residents and property within Ohio are subject to the judgment of a sister state.” (Motion at 7). But he cites no authority to support this proposition, which contradicts well-settled authority that provides that a foreign judgment must be given full faith and credit unless there is a question as to the sister state court’s jurisdiction or a question of fraud. *See Milliken v. Meyer*, 311 U.S. 457, 462, 61 S. Ct. 339, 85 L. Ed. 278 (1940). But there have been no challenges to the issuing court’s jurisdiction or suggestion that it was rendered as a result of fraud. Accordingly, Judge Ruehlman is without jurisdiction to interfere with the enforcement of the judgment, especially when certain of the information Chesley demands to be disclosed, i.e. the names and addresses of the judgment creditors, is not required until domestication—not before—and there is no requirement that the amount of the judgment remaining to be collected be disclosed. In fact, Judge Ruehlman’s temporary restraining order has expanded the requirements of Ohio law by not only enjoining domestication, but also imposing preservation requirements on Ms. Ford regarding broad topics.

Judge Ruehlman also contends that the underlying lawsuit presents “issues as to whether or not the foreign judgment is final and enforceable under the Uniform Enforcement of Foreign Judgments Act.” (Motion at 7). But again, an Ohio court has no jurisdiction to reconsider a judgment issued by a foreign court. Here, Chesley already asserted arguments regarding the finality and definiteness of the judgment in Kentucky. (*See* Petition, Exhibit D, Chesley’s Post-Judgment Motions). He is prohibited from coming to Ohio and raising the same issues, and an

Ohio court has no jurisdiction to entertain such arguments and provide relief expressly denied in Kentucky.

To the extent that an Ohio court has jurisdiction over a foreign judgment, it is limited to the enforcement of a foreign judgment. And, even then, there is no authority to support Judge Ruehlman's actions here. Judge Ruehlman prohibited the domestication of the judgment. While an Ohio court has jurisdiction to ensure that R.C. 2329.021 is followed, Judge Ruehlman cannot prohibit the judgment creditors from invoking this statute to guide enforcement of the judgment. Interference with statutory remedies is not permitted. *See State, ex rel. Celeste, Governor*, 17 Ohio St.3d at 163 (granting a writ when a temporary restraining order precluded relators from pursuing exclusive statutorily prescribed remedies). Judge Ruehlman's order prohibits Ms. Ford from domesticating or enforcing the foreign judgment as set forth in R.C. 2329 *et seq.* Contrary to the motion, Judge Ruehlman's order does not identify any action Ms. Ford could take to lift the injunctive relief. And, even if it did, under this law, there are no prequalifications to filing the foreign judgment.

Moreover, Judge Ruehlman has ordered Ohio entities not to comply with Kentucky orders. Such interference in the proceedings of a sister court is impermissible, especially in light of the Kentucky Court of Appeals' recent order denying interlocutory relief from the Transfer Order. (*See* 10/7/15 Order, attached hereto as Exhibit A). Chesley invoked his proper remedy in Kentucky by petitioning the Kentucky appellate court for relief. That relief has been denied. Ohio courts do not have the jurisdiction to disregard such decisions and provide the opposite relief. Ohio courts are simply not appellate courts to Kentucky courts.

The cases on which Judge Ruehlman relies to establish his jurisdiction are distinguishable. First, in the *State ex rel. Ruessman v. Flanagan, Judge et al.*, 65 Ohio St.3d 464,

605 N.E.2d 31 (1992), there was an actual case and controversy to be decided by the court. The parties disputed payment of alimony under a divorce decree from another state, and the relator's argument in support of the issuance of the writ related to personal jurisdiction and venue issues. *See id.* at 467. Those are not the legal issues in the underlying case. Here, Judge Ruehlman lacks jurisdiction to entertain the underlying matter and to issue the orders that he has because no justiciable controversy exists. Under those circumstances, the issuance of a writ is appropriate, a conclusion that even the *Ruessman* court recognizes exists. *See id.* at 466 (recognizing that "where there is a total want of jurisdiction on the part of a court, a writ of prohibition will be allowed").

Judge Ruehlman cites *Lingo v. the State of Ohio*, 138 Ohio St.3d 427, 439-440, 2014-Ohio-1052, ¶ 47, to suggest that a trial court is "free to examine the judgment to determine whether or not defects in the judgment, or its finality, make it acceptable for full faith and credit." (Motion at 8). But *Lingo* does not go so far. Instead, it states that "a court may refuse to enforce the void judgment of another court or prevent a party from executing upon the judgment." *Lingo*, 2014-Ohio-1052, at 47. *Lingo's* discussion is limited to void judgments. And, in *Fifth Third Bank, N.A. v. Maple Leaf Expansion, Inc.*, 188 Ohio App.3d 27, 2010-Ohio-1537, 934 N.E.2d 366, ¶ 10 (7th Dist.), a case cited by the *Lingo* court, the court noted that a foreign judgment may only be challenged on limited grounds, including that the issuing court lacked jurisdiction. But that is not at issue in this case, as the Kentucky court undoubtedly has jurisdiction over Chesley. Therefore, this case actually supports Ms. Ford's position that Judge Ruehlman is without jurisdiction to entertain the case or issue the orders that he has. This Court should deny Judge Ruehlman's motion.

B. When a Judge Patently and Unambiguously Lacks Jurisdiction, Whether an Adequate Remedy at Law Exists Is Immaterial.

Judge Ruehlman's motion suggests that Ms. Ford is not entitled to relief because she has an adequate remedy at law. But this argument fails because, if Judge Ruehlman is patently and unambiguously without jurisdiction, Ms. Ford is entitled to relief regardless of whether an adequately remedy at law exists. *See State ex rel. Adams v. Gusweiler*, 30 Ohio St.2d 326, 329, 285 N.E.2d 22 (1972). Here, because no justiciable controversy exists, Judge Ruehlman is without jurisdiction to consider the matter pursuant to Article IV of the Ohio Constitution. Furthermore, because Judge Ruehlman's orders have interfered with the orders of a sister court, and have attempted to block any enforcement—in any state—of a valid and enforceable judgment, this Court has the power to step in and grant Ms. Ford the relief she requests.

Moreover, Ms. Ford has no adequate remedy at law. Chesley has money to at least satisfy the judgment in part if not whole, and the continued injunction without requiring security provides Chesley with the opportunity to dissipate his assets. The Kentucky courts have found that Chesley has not been forthcoming about his assets and that he has made questionable transfers of personal assets. For example, the Kentucky Court of Appeals has recognized that “Chesley holds the only shares in WSBC, and had transferred more than \$59 million dollars from his personal accounts to WSBC, including over one million dollars after the trust was in place.” (*See* 10/08/15 Order denying Chesley's petition for writ of prohibition against Judge Schrand, attached hereto as Exhibit B, at 2). The Kentucky trial court, which has granted multiple motions to compel against Chesley, has found that Chesley has failed to identify potential fee income and has been controlling WSBC—the very entity into which he has transferred millions of his personal dollars. (*See* 9/25/15 Order, granting Plaintiffs' motion to transfer shares, attached hereto as Exhibit C, at 1-2).

Given the findings of the Kentucky courts, an appeal is not an adequate remedy at law because, by the time an appeal occurs, Chesley will have had months—if not years—to dissipate his assets, and the judgment creditors will be effectively without any remedy to enforce their judgment. Therefore, under the facts of this case, there is no adequate remedy at law.

III. Conclusion

Judge Ruehlman's motion provides this Court no reason to dismiss Ms. Ford's Petition. In fact, its failure to identify the legal claim Chesley has asserted against either Ms. Ford or the judgment creditors shows that there is no justiciable controversy for Judge Ruehlman to resolve, and his actions throughout the underlying litigation are not supported by the Ohio Constitution's grant of power. This Court should deny Judge Ruehlman's motion and should grant Ms. Ford's Petition for Writs of Mandamus and Prohibition and dismiss the underlying complaint.

Respectfully submitted,

s/ Brian S. Sullivan

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on the following individuals via U.S.

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Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001066-I

STANLEY M. CHESLEY

MOVANT

MOTION FOR INTERLOCUTORY RELIEF
BOONE CIRCUIT COURT
ACTION NO. 05-CI-00436

v.

MILDRED ABBOTT, ET AL.

RESPONDENTS

ORDER

** ** * * * * *

BEFORE: J. LAMBERT, STUMBO AND VANMETER, JUDGES.

Movant, Stanley Chesley (hereinafter, "Chesley"), seeks interlocutory relief, pursuant to Kentucky Rules of Civil Procedure ("CR") 65.07, to dissolve an order of the Boone Circuit Court¹, as entered on June 23, 2015, which he describes

¹ Simultaneous with the filing of his Motion for Interlocutory Relief, Movant sought emergency intermediate relief under CR 65.07(6) to stay the circuit court order pending this Court's decision on the motion for interlocutory relief. By Order dated August 25, 2015, this Court denied the motion for emergency intermediate relief.

as a “mandatory injunction.”² In addition to interlocutory relief, Chesley seeks the Court’s order on two other motions. First, Chesley seeks to supplement the record with an additional exhibit (“Motion to Supplement”). And Second, Chesley seeks an Order, pursuant to CR 7.03, to file under seal another exhibit with the Court (“Motion to File Under Seal”). Having reviewed the pleadings, all arguments and applicable law, we deny the motion for interlocutory relief, deny the motion to supplement the record and deny the request to file an exhibit under seal.³

A short synopsis of the underlying facts are as follows. On August 1, 2014, the Boone Circuit Court entered a judgment against Chesley and in favor of Mildred Abbott, *et al.* (“Abbott”). In the order, the court held Chesley jointly and severally liable for \$42 million dollars owed to Abbott as recovery for the breach of Chesley’s fiduciary duty to his clients by taking a significantly greater fee for his work than he was entitled and for taking the money without the knowledge or consent of the clients. Chesley’s breach of duty stems from his role in what has become known as the “fen-phen” diet drug settlement action.⁴ The Boone Circuit Court issued amended orders to the August 1, 2014 judgment on September 19,

² Motion for Interlocutory Relief at 4.

³ Chesley has a concurrent action before this Court, Case No. 2015-CA-001067, which concerns the same facts discussed in this order. In the concurrent action, he has filed a Petition for Writ of Prohibition, a Motion to File Under Seal Plaintiffs’ Motion to Transfer Beneficial Interest in Property Held in Trust, Memorandum of Law in Support and Attached Exhibits and a Motion to Supplement the Record with an Additional Exhibit. The Court will issue decisions on the writ and the pending motions in Case No. 2015-CA-001067 by separate order.

⁴ *Darla Guard v. A.H. Robins Co.*, Boone Circuit Court, Case No. 98-CI-795.

2014 and October 22, 2014 modifying language as to the collection of annual interest on the judgment and the date from which such interest could begin calculation. However, within the amended orders, none of the original conclusive findings of liability against Chesley were altered, amended or vacated by the circuit court. Chesley appealed the circuit court's judgment and rulings⁵ but did not post a supersedeas bond⁶ to ensure enforcement of the judgment would be stayed pending his appeal.

As a result of his role in the "fen-phen" action, Chesley was disbarred by the Kentucky Supreme Court. *Kentucky Bar Ass'n v. Chesley*, 393 S.W. 3d 584 (Ky. 2013). He subsequently resigned his Ohio law license. Because Ohio does not allow a non-attorney to own an interest in a law firm, Chesley transferred his interest in the law firm of Waite, Schneider, Bayless & Chesley Co., L.P.A. ("WSBC") to a trust held by an Ohio attorney, who was authorized to liquidate the assets, pay creditors and distribute the remaining assets. Chesley holds the only shares in WSBC and had transferred more than \$59 million dollars from his personal accounts to WSBC, including over \$1 million dollars after the trust was in place.

⁵ Those appeals are also each styled, *Chesley v. Abbott*, 2014-CA-001725, 2014-CA-001900 and 2014-CA-001984, and are currently before this Court. These appeals were consolidated, for all purposes, including briefing, by order dated January 20, 2015.

⁶ See CR 62.03 and 73.04.

On June 9, 2015, the circuit court conducted a hearing on Abbott's motion to transfer Chesley's beneficial interest in the trust to satisfy the \$42 million dollar judgment. Abbott argued that because the circuit court has jurisdiction over Chesley himself, it has the authority to order him to direct the trust to pay over any disbursed funds he will receive to Abbott's attorney to settle the August 1, 2014 judgment. Chesley countered that because the trust is located in Ohio, the circuit court lacked jurisdiction to control the distribution of any funds from it. The circuit court entered an order on June 23, 2015, finding it has personal jurisdiction over Chesley and a valid judgment was entered against him. The circuit court also found Abbott and the other circuit court plaintiffs are within their rights to seek the court's assistance to collect on the judgment and state law gives the court authority to enforce the surrender of Chesley's money in the execution and enforcement of a judgment. Chesley seeks interlocutory relief from this order.

Having reviewed the record and the arguments of the parties, the Court finds that the June 23, 2015 circuit court order is not an injunction, as argued by Chesley, but is a post-judgment order meant only to execute the circuit court's previous finding that Chesley is liable for the \$42 million dollar judgment, as established in its August 1, 2014 decision.

The Court finds Chesley is incorrect in his legal characterization of the June 23, 2015 order. The Court finds the relief he is seeking pursuant to CR

65.07 cannot be granted. CR 65.07 expressly provides that a party affected by entry of a temporary injunction may seek relief before this Court. *Commonwealth, ex rel. Conway v. Shepherd*, 336 S.W.3d 98, 101 (Ky. 2011). As stated in *Curry v. Farmers Livestock Mkt.*, 343 S.W.2d 134, 135 (Ky. 1961), a temporary injunction is designed merely to hold the status quo until the merits of a claim can be decided. A moving party seeking relief from an injunction must establish that its rights are or will be violated and the movant will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action. See CR 65.04(1).

The Court has reviewed the August 1, 2014 order, as well as the subsequent June 23, 2015 order, and finds both provide findings of fact and conclusions of law to support the final adjudication, under CR 54.02, of Chesley's liability for breach of fiduciary duties for the judgment amount of \$42 million dollars and for Abbott's entitlement to seek execution of the judgment through the collection of distributions and payments made as a benefit flowing from Chesley's shares in WSBC. Chesley briefly argues, by footnote, that certain issues remain to be adjudicated before the circuit court, including Abbott's demand for punitive damages in relation to the claim of breach of fiduciary duties.

CR 54.02(1)⁷ (emphasis added) provides:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, *the court may grant a final judgment upon one or more but less than all of the claims or parties* only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final. In the absence of such recital, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is interlocutory and subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

The Court acknowledges that CR 54.02(1) requires a specific recital in a court judgment involving multiple claims or parties that “there is no just reason for delay” to denote a final decision of the court on the specific issues(s) before it. In our review of the aforementioned orders, we did not find that specific recital. However, we find in those orders neither language from Boone Circuit Court stating it is entering an injunction nor language indicating preservation of rights pending a final trial on the merits. The Boone Circuit Court’s June 23, 2015 order is not subject to review under CR 65.07 if the circuit’s decision was not a temporary injunction. This Court finds that the order, when analyzed under CR

⁷ CR 54.02 is titled, “Judgment upon multiple claims or involving multiple parties.”

65.04(1), is not an injunction, temporary or otherwise, and not capable of being subject to interlocutory relief. The order was not entered during the pendency of the lawsuit itself and it certainly does not render a final judgment ineffectual. It is very much the opposite. It is designed to give effect to that final judgment.

In *Shawnee Telecom Res., Inc. v. Brown*, 354 S.W.3d 542 (Ky. 2011), Kentucky's highest court stated that in rendering determinations to grant final judgment as to fewer than all claims in the litigation, as alleged by Chesley in this matter, thereby making possible an immediate appeal from the judgment, courts should be sensitive to the general rule disallowing piecemeal appeals, but a trial court is granted discretion in applying the rule. *Id.* at 551. And, where the judgment truly disposes of a distinct and separable aspect of the litigation, the trial court's determination that there is no just reason for delay will only be disturbed if that discretion was abused. *Id.* The Court finds no evidence of abuse of discretion in the decisions by Boone circuit. The June 23, 2015 order served only to restate the circuit court's previous judgment against and personal jurisdiction over Chesley by addressing Abbott's motion to enforce a final and appealable judgment and to seek an assignment and "[a] marshaling [of] the assets ... and distributing the proceeds." See *Sec. Fed. Sav. & Loan Ass'n v. Nesler*, 697 S.W. 2d 136, 139 (Ky. 1985).

Despite that lack of the recital of “no just reason for delay” the Court finds that it is not fatal. The entry of the August 1, 2014 order establishing Chesley’s liability and the follow-up, post-judgment June 23, 2015 order giving Abbott the ability to move forward in executing collection efforts against the trust disbursements, when read plainly, are final adjudications on the claim. This Court has not found limiting language in the circuit court orders at issue in this matter to justify Chesley’s request for interlocutory relief. This Court finds the circuit court intended to finalize the issues of Chesley’s liability on the question of his breach of fiduciary duties, as set forth in the August 1, 2014 order, and to give legal authority to Abbott and her counsel to move forward in executing the judgment in the June 23, 2015 order.

Two final motions pending in this action require resolution: the Motion to Supplement and the Motion to File Under Seal. Chesley has moved to supplement the record with an additional exhibit (“Motion to Supplement”). The exhibit in question is categorized by Chesley as a response memorandum filed in the Court of Common Pleas in Hamilton County, Ohio, as filed by Angela M. Ford, who is counsel for Abbott. The exhibit is titled, “*Defendant Angela M. Ford’s Response in Opposition to the Motion to Intervene filed by Waite Schneider Bayless & Chesley Co., LPA*” in Case No. A1500067 (“Ford’s Ohio Response”).⁸

⁸ Chesley alleges the Ford Ohio Response was filed on July 22, 2015 in the Court of Common Pleas.

In summary, Chesley argues that Abbott's attorney, Angela Ford, makes conflicting arguments in her Ohio pleading⁹ when compared to the pleadings she has submitted on behalf of Abbott as counsel before this Court as to the "extraterritorial effect" of the August 1, 2014 and June 23, 2015 orders of the Boone Circuit Court. By moving to have this exhibit added to the record before this Court, Chesley seeks to rebut arguments by Abbott that the respondents have been procedurally blocked in Ohio from executing the circuit court orders to collect the disbursements from the trust to satisfy the judgment against Chesley.

The Court is unpersuaded that this exhibit should be added to the record. Chesley cites no case law or statute to support his arguments and fails to demonstrate how the addition of this item is helpful to the Court in evaluating the request for interlocutory relief and the question of the intent and effect of the Boone Circuit Court's orders. This exhibit is not relevant to the matter at hand. For this reason, the Court denies movant's request to supplement the record.

The final motion before the Court is Chesley's request to file, under seal, another exhibit with the Court, pursuant to CR 7.03. Movant seeks to file the *"Plaintiffs' Motion to Transfer Beneficial Interest in Property Held in Trust,*

⁹ The Court notes that it appears Angela Ford is represented by private counsel in the Court of Common Pleas, while in Kentucky, before both the Boone Circuit Court and this Court, she serves as counsel for Abbott. In the lower court action, the Boone Circuit Court has identified Angela Ford as being responsible for collecting funds owed by Chesley to Abbott and other respondents.

Memorandum of Law in Support and Attached Exhibits”, a document that was originally filed in the lower court action in Boone Circuit Court Case No. 05-CI-436. The lower court approved, by order dated January 30, 2015, an agreed protective order by the parties to place the “motion to transfer” and its accompanying documents under seal. Chesley argues that as the “motion to transfer” documents remain subject to the circuit court’s protective order, this Court should grant the request for protection from public view.

The Court has reviewed the documents proposed to be placed under seal and its contents. The Court prefers to err in the favor of openness, public disclosure and access to documents in judicial actions. As noted in *Roman Catholic Diocese v. Noble*, 92 S.W.3d 724 (Ky. 2002), “... [J]udicial documents are presumptively available to the public, but may be sealed if the right to access is outweighed by the interests favoring non-disclosure.” *Id.* at 731. In reviewing the documents for which Chesley seeks protection, the Court did not identify any of the privacy data generally subject to protection under CR 7.03(1) and finds no cause to support protection of the documents under CR 7.03(4). Chesley has not identified a reason so compelling as to support this Court finding that the requested documents be hidden from public view. This Court is not beholden to the decision of the circuit court as to its acceptance of the parties’ agreed protective order. Chesley’s motion on this issue is denied.

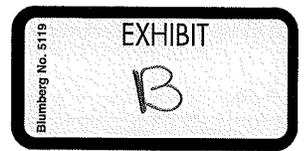
CONCLUSION

For the foregoing reasons, the Court ORDERS that the motion for interlocutory relief be, and hereby is DENIED. The motion to supplement the record with an additional exhibit is DENIED. The motion to file an exhibit under seal is DENIED.

ENTERED: OCT 07 2015



JUDGE, COURT OF APPEALS



Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001067

STANLEY M. CHESLEY

PETITIONER

vs.

HON. JAMES R. SCHRAND
Boone Circuit Court, Division III

RESPONDENT

and

MILDRED ABBOTT, ET AL.

REAL PARTIES IN INTEREST

ORDER DENYING PETITION
FOR A WRIT OF PROHIBITION

** ** * * * * * ** ** **

BEFORE: J. LAMBERT, STUMBO AND VANMETER, JUDGES

Stanley Chesley, Petitioner, has moved this Court, pursuant to Kentucky Rules of Civil Procedure (CR) 76.36, to prohibit the Boone Circuit Court from enforcing its June 23, 2015 Order. The June 23, 2015 Order requires Petitioner to transfer monies he received from his interest in his former Ohio law firm to the Real Parties in Interest, and directs him to tell the Ohio Trustee of that

firm to make future all future distributions to Respondents' attorney. We deny Petitioner's writ.

Relevant Facts

A judgement entered by the Boone Circuit Court on October 22, 2014, against Chesley stems from his role in what has become known as the "fen-phen" diet drug case (the *Guard* case). Briefly stated, Chesley breached his fiduciary duty to clients by taking a significantly greater fee for his work than he was entitled to, and doing so without the knowledge or consent of the clients. In its order, the circuit court found Chesley jointly and severally liable for the \$42 million owed to the plaintiffs as recovery for the breach. Chesley appealed that order (2014-CA-001900), but did not post a supersedeas bond to ensure the judgment would be stayed pending his appeal.

Chesley was disbarred by the Kentucky Supreme Court, and subsequently resigned his Ohio law license. Because Ohio does not allow a non-attorney to own an interest in a law firm, Chesley transferred his interest in Waite, Schneider, Bayless & Chesley Co., L.P.A. (WSBC) to a trust held by an Ohio attorney, who was authorized to liquidate the assets, pay creditors, and distribute the remaining assets. Chesley holds the only shares in WSBC, and had transferred more than \$59 million dollars from his personal accounts to WSBC, including over one million dollars after the trust was in place.

On June 9, 2015, the circuit court conducted a hearing on Abbott's motion to transfer Chesley's beneficial interest in the trust to satisfy the \$42 million judgment. Abbott argued that because the circuit court had jurisdiction over Chesley himself, it had the authority to order him to direct the trust to pay over any funds he would receive to Abbott's attorney to settle the October 22, 2014 judgment. Chesley countered that because the trust was located in Ohio, the circuit court lacked jurisdiction to control the distribution of any funds therefrom. Both parties argue the same to this Court.

Analysis

It is well-established that a writ of prohibition should only be granted when a petitioner can demonstrate that either:

1) the lower court is proceeding or is about to proceed outside its jurisdiction and there is no adequate remedy by appeal, or 2) the lower court is about to act incorrectly, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury would result.

Hoskins v. Maricle, 150 S.W.3d 1, 6 (Ky. 2004) (quoting *Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 199 (Ky. 1997)). Petitioner asserts that he is entitled to relief under both tests.

Of course, "[w]hether to issue a writ is 'always discretionary, even when the trial court was acting outside its jurisdiction.'" *Goldstein v. Feeley*, 299

S.W.3d 549, 555 (Ky. 2009) (quoting *Hoskins*, 150 S.W.3d at 9; *Bender*, 343 S.W.2d at 800). “In other words, a writ is never mandatory, even upon satisfaction of one of the tests laid out in *Hoskins*.” *Id.*

I. Jurisdiction in the Context of Extraordinary Writs

Petitioner asserts that he is entitled to relief because the Boone Circuit Court does not possess jurisdiction to enforce the October 22, 2014 judgment. “It is fundamental that a court must have jurisdiction before it has authority to decide a case. Jurisdiction is the ubiquitous procedural threshold through which all cases and controversies must pass prior to having their substance examined.” *Wilson v. Russell*, 162 S.W.3d 911, 913 (Ky. 2005). Furthermore, a circuit court retains “the authority of a court to enforce its own judgments and remove any obstructions to such enforcement.” *Young v. U.S. Bank, Inc.*, 343 S.W.3d 618, 621 (Ky. App. 2011) (quoting *Akers v. Stephenson*, 469 S.W.2d 704, 706 (Ky. 1970)).

There are three categories of jurisdiction: personal jurisdiction, subject-matter jurisdiction, and jurisdiction over a particular case. *Nordike v. Nordike*, 231 S.W.3d 733, 737-38 (Ky. 2007). Personal jurisdiction concerns “the court’s authority to determine a claim affecting a specific person.” *Id.* at 737 (citing *Milby v. Wright*, 952 S.W.2d 202, 205 (Ky. 1997)). Subject matter jurisdiction refers to the court’s ability to hear cases over “the kind of case assigned to that court by a statute or constitutional provision.” *Daugherty v.*

Telek, 366 S.W.3d 463, 467 (Ky. 2012). In other words, “a court is deprived of subject matter jurisdiction only where that court has not been given, by constitutional provision or statute, the power to do anything at all.” *Id.* Finally, jurisdiction over a particular case concerns a court’s ability to hear a specific issue and “often turns solely on proof of certain compliance with statutory requirements and so-called jurisdictional facts, such as that an action was begun before a limitations period expired.” *Nordike*, 231 S.W.3d 738. This third category also includes ripeness, mootness, and the failure to state a claim. *Id.*

“In the context of the extraordinary writs, ‘jurisdiction’ refers not to mere legal errors but to subject-matter jurisdiction.” *Lee v. George*, 369 S.W.3d 29, 33 (Ky. 2012). Stated plainly, “[j]urisdiction in this connection means jurisdiction of the subject matter.” *Goldstein*, 299 S.W.3d at 552 (quoting *Watson v. Humphrey*, 293 Ky. 839, 170 S.W.2d 865, 866–867 (1943)). Personal jurisdiction in writ cases is implicated only under the second test, as to whether a court is acting “erroneously although within its jurisdiction.” *Id.* at 553. Jurisdiction over a particular case is also insufficient to meet the “no jurisdiction” test. *See St. Joseph Catholic Orphan Soc’y v. Edwards*, 449 S.W.3d 727, 736-37 (Ky. 2014).

II. The Circuit Court Acted Within Its Jurisdiction

Although Petitioner asserts that his requests for relief implicate the first *Hoskins* test, that the lower court is proceeding or is about to proceed outside its jurisdiction and there is no adequate remedy by appeal or otherwise, *Hoskins*, 150 S.W.3d at 6, we disagree. Petitioner's claims fall solely within the second test, and so he must prove that the lower court is about to act erroneously within its jurisdiction, and that there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury would result. *Id.*

A. Alleged Noncompliance with KRS 426.381

Petitioner first argues that the Boone Circuit Court lacked subject-matter jurisdiction because it failed to comply with the procedural requirements of KRS 426.381. KRS 426.381(1) provides as follows:

After an execution of fieri facias, directed to the county in which the judgment was rendered, or to the county of the defendant's residence, is returned by the proper officer, either as to the whole or part thereof, in substance, no property found to satisfy the same, the plaintiff in the execution may by an amended and supplemental petition filed in the action have the same redocketed and join with the execution defendant or defendants any person believed to be indebted to him or them, or to hold money or other property in which he or they have an interest, or to hold evidences or securities for the same. Upon the filing of such amended petition the case shall be transferred to the equity docket and summons issued thereon. In such supplemental proceeding or in a separate suit in equity against such parties (at his option) the plaintiff may have discovery and disclosure from the judgment creditor and his debtor or bailee, and may have any property

discovered, or a sufficiency thereof, subjected to the satisfaction of the judgment.

Specifically, Petitioner claims that Respondents failed to direct the writ of execution to the county in which the judgment was rendered, or to file an amended complaint in compliance with CR 8.01. Even assuming that Respondents did not comply with KRS 426.381(1), one party's statutory noncompliance does not divest a court of subject-matter jurisdiction. ("[S]ubject matter jurisdiction does not mean 'this case' but '*this kind of case.*'" *Daugherty*, 366 S.W.3d at 466 (quoting *Duncan v. O'Nan*, 451 S.W.2d 626, 631 (Ky.1970) (emphasis in original))).

If anything, Petitioner's argument is that the Boone Circuit Court lacked jurisdiction to hear this particular case. The Kentucky Supreme Court noted this distinction in a recent case, in the context of ecclesiastical abstention:

That all cases where ecclesiastical abstention applies have similar characteristics, namely that they involve ecclesiastical issues, does not render them a *type* of case any more than cases invoking qualified governmental immunity are a case type for purposes of precluding circuit-court jurisdiction. We, therefore, conclude that ecclesiastical abstention does not divest Kentucky courts of subject-matter jurisdiction because it does not render our courts unable to hear *types* of cases, only *specific* cases pervaded by religious issues. To hold otherwise would be to require all plaintiffs to plead affirmatively the inapplicability of ecclesiastical abstention in their complaint to establish proper subject-matter jurisdiction.

St. Joseph Catholic Orphan Soc'y, 449 S.W.3d at 736-37.

We need not consider this argument, however, because subject-matter jurisdiction is the only type of jurisdiction implicated in extraordinary writ cases. *Lee*, 369 S.W.3d 33. As the Boone Circuit Court could not lose subject-matter jurisdiction, Petitioner's argument that his case falls within the "no jurisdiction" test lacks merit.

B. Extraterritorial Application of Statutes

Petitioner next argues that the circuit court lacked jurisdiction because KRS 426.384 and KRS 426.381 should only be applied to property located within Kentucky's borders. Petitioner cites *Union Underwear Co. v. Barnhart*, 50 S.W.3d 188, 190 (Ky. 2001) for "the well-established presumption against extraterritorial operation of statutes." It is true that "unless a contrary intent appears within the language of the statute, we presume that the statute is meant to apply only within the territorial boundaries of the Commonwealth." *Id.* Our Supreme Court in that case, however, was clear that even though the trial court in that case lacked the authority to hear that particular case, the trial court retained subject-matter jurisdiction over employment law cases generally. *Id.* ("While we disagree ... that the trial court lacked subject-matter jurisdiction over this case, we do agree that the KCRA does not apply to *Barnhart* because it would be an extraterritorial application of the Act.") *See also St. Joseph Catholic Orphan Soc'y*, 449 S.W.3d

at 736-37 (discussing the distinction between subject-matter jurisdiction and particular-case jurisdiction). Similarly, even if we were to hold that this statute had extraterritorial application, this would not divest a circuit court of subject-matter jurisdiction to hear this kind of case; it would only serve to limit a circuit court's enforcement of the cases already before it. Because extraordinary writs implicate only subject-matter jurisdiction and Petitioner's argument concerning the alleged extraterritorial application of KRS 426.384 and KRS 426.381 implicates only jurisdiction over a particular case, his argument that the case falls within the "no jurisdiction" test is also without merit.

C. Conflicts of Laws

Petitioner also makes arguments based on several provisions to the RESTATEMENT (SECOND) OF CONFLICTS OF LAWS, to the effect that the Boone Circuit Court was without jurisdiction to enforce a judgment over the Ohio bank account. This argument fails for the same reason as Petitioner's other arguments: assuming that it is true, it would still not divest the circuit court of subject-matter jurisdiction to hear this type of case.

III. Petitioner Would Not Suffer Irreparable Injury

Having determined that each of Petitioner's arguments fall squarely within the "erroneously but within its jurisdiction" *Hoskins* test, we will now

examine Petitioner's claims under that test. We determine that Petitioner will not suffer irreparable injury.

Petitioner argues that he will suffer irreparable injury if this Court does not grant his petition because Respondents did not name all the Real Parties in Interest, and that therefore any money transferred would be difficult to recover. Although Petitioner states that his "property rights" would be compromised, Petitioner's only actual damages are monetary. "Inconvenience, expense, annoyance" do not constitute irreparable injury. *Fritsch v. Caudill*, 146 S.W.3d 926, 930 (Ky. 2004). The mere loss of valuable rights . . . [does not] constitute [] great and irreparable injury." *Schaetzley v. Wright*, 271 S.W.2d 885, 886 (Ky. App. 1954).

[M]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough." *Sampson*, 415 U.S. 61, 90, 94 S.Ct. 937 (1974) (quoting *Virginia Petroleum Jobbers Ass'n v. Federal Power*, 259 F.2d 921, 925 (D.C.Cir.1958)). See *Zirkle v. District of Columbia*, 830 A.2d 1250, 1256–1257 (D.C.2003) ("For it is well established that economic and reputational injuries are generally not irreparable.").

Norsworthy v. Kentucky Bd. of Medical Licensure, 330 S.W.3d 58, 62 (Ky. 2009).

Petitioner has not shown that any injury could not be righted by seeking reimbursement of any monies improperly turned over to plaintiffs' attorney should he succeed on appeal. His argument that the money is "likely

unrecoverable” is mere speculation, and is simply insufficient to support granting a writ. *See Avery v. Knopf*, 807 S.W.2d 55, 56 (Ky. 1991) (“Rank speculation is hardly an adequate basis for a finding of irreparability.”). Furthermore, even if some of Petitioner’s multi-million dollar judgment was distributed to some Real Parties in Interest erroneously (i.e., to persons who are not rightly judgment creditors) then, absent remitter, Petitioner would still be required to pay the entirety of the lump sum judgment that had been entered against him. Petitioner, therefore, has failed to demonstrate that he would suffer any injury at all. Because Petitioner will not suffer irreparable injury, he is not entitled to relief under the second *Hoskins* test.

IV. Petitioner’s Writ Is Not A “Certain Special Case”

A writ may issue “in the absence of a showing of specific great and irreparable injury ... provided a substantial miscarriage of justice will result if the lower court is proceeding erroneously, and correction of the error is necessary and appropriate in the interest of orderly judicial administration.” *Ridgeway Nursing & Rehab. Facility, LLC v. Lane*, 415 S.W.3d 635, 640 (Ky. 2013) (quoting *Bender v. Eaton*, 343 S.W.2d 799, 801 (Ky.1961)).

Petitioner claims entitlement to relief under the “certain special cases” category of writs. He argues that the circuit court’s order disrupts orderly judicial administration because Respondents should have domesticated their judgment in

Ohio. Petitioner obtained two *ex parte* Ohio restraining orders, which prohibit Respondents' counsel from taking action in Ohio to enforce the Kentucky Judgment. That Court has apparently not yet held a hearing on the subject. First, we note that this "rare exception []" to the general rule that a petitioner must suffer an irreparable injury in order to be entitled to a writ 'tend[s] to be limited to situations where the action for which the writ is sought would violate the law....'" *Toyota Motor Mfg., Kentucky, Inc. v. Johnson*, 323 S.W.3d 646, 654 (Ky. 2010) (quoting *Grange Mut. Ins. Co. v. Trude*, 151 S.W.3d 803, 808 (Ky. 2004)).

Additionally, our Supreme Court has noted that "[f]or the most part, we have reserved the administration-of-justice 'special cases' exception for questions, often first-impression questions, bearing importantly on the public administration of the law or on a party's fundamental rights." *Inverultra, S.A. v. Wilson*, 449 S.W.3d 339, 348-49 (Ky. 2014). A petitioner must also show that the "error will lead to 'a substantial miscarriage of justice.'" *Lee v. George*, 369 S.W.3d 29, 36 (Ky. 2012) (quoting *Bender v. Eaton*, 343 S.W.2d 799, 801 (Ky. 1961)).

Petitioner's *ex parte* temporary restraining order issued by the Ohio court was entered on January 7, 2015, and by its terms "last[ed] for no more than 14 days, unless extended by the Court or by agreement of the parties." At the time the petition and response were filed, there had been no hearing on the issue. By denying Petitioner's writ, however, we are not violating the restraining orders

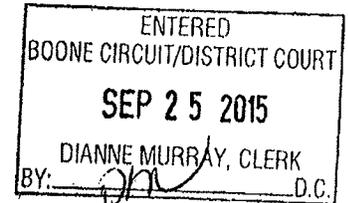
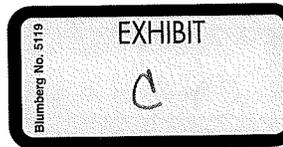
issued by the Ohio court. If Respondents choose to domesticate the judgment in Ohio, rather than collecting monies as they are dispersed to Petitioner, they must still comply with all applicable Ohio laws in collecting their judgment.

Because Petitioner has not demonstrated that he will suffer irreparable injury, the Court orders that the petition for a writ of prohibition be, and hereby is, DENIED. The motion to supplement the record with an additional exhibit is therefore DENIED as moot. Petitioner's motion to file under seal is hereby DENIED.

ENTERED: OCT 08 2015



JUDGE, COURT OF APPEALS



COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
DIVISION III
CASE NO. 05-CI-00436

MILDRED ABBOTT, et al.

PLAINTIFFS

V.

STANLEY M. CHESLEY, et al.

DEFENDANTS

ORDER

This matter is before the Court on the Plaintiffs' Motion to Execute. The Court, having reviewed Plaintiffs' Motion and Memorandum, Supplemental Memorandum, Defendant's Opposition, Plaintiffs' Reply, the Court file, and having heard argument from counsel, and the Court being in all ways sufficiently advised, finds as follows:

This Court entered Judgment against Defendant Chesley on August 1, 2014, finding him jointly and severally liable as a matter of law for the \$42 million in damages previously awarded to Plaintiffs against Defendants Gallion, Cunningham and Mills. The Judgment against Defendant Chesley was made final pursuant to CR 54.02, and Defendant Chesley did not post a supersedeas bond to secure a stay of enforcement pending appeal. This Court entered an Order on June 23, 2015 on Plaintiffs' Motion to Transfer Beneficial Interest in Property Held in Trust, which ordered Defendant Chesley to direct that any distributions or payments payable to him through his law firm Waite, Schneider, Bayless & Chesley, Co., L.P.A. ("WSBC"), from his interest in WSBC or pursuant to the Wind-Up Agreement winding up WSBC's business be paid to Plaintiffs through their counsel in satisfaction of the Judgment against him. No payments have been made to Plaintiffs pursuant to this Court's June 23, 2015 Order. Additionally, this Court has granted multiple motions to compel against Defendant Chesley and in favor of Plaintiffs

regarding Defendant Chesley's incomplete discovery responses. See Order (Feb. 13, 2015); Order (Mar. 27, 2015); Order (June 9, 2015).

Plaintiffs have obtained documents showing that despite the above Orders, Defendant Chesley failed to identify fee income responsive to Plaintiffs' discovery requests. This includes fees Defendant Chesley may receive from *Merilyn Cook, et al. v. Rockwell Int'l Corp.*, Case No. 1:90-cv-00181-JLK in the United States District Court for the District of Colorado, and any additional fees he may be entitled to from *In Re Fannie Mae Securities Litig.*, Case No. 1:04-CV-01639 in the United States District Court for the District of Columbia ("Fannie Mae Litigation"). The Court has concerns that after this issue was raised in the Plaintiffs' instant Motion and after the Court conducted a Hearing on the Motion on September 8, 2015, Chesley then supplemented his Objections and Responses on September 16, 2015 to include potential income in the *Cook* matter.

Defendant Chesley claims that he no longer controls WSBC pursuant to the Wind-Up Agreement dated April 15, 2014. Hamilton County Court of Common Pleas Judge Robert P. Ruhlman agrees with Chesley as noted in his August 26, 2015 Order when he found, "Mr. Chesley owns no shares of WSBC and has only a contingent remainder interest in the Wind-Up Agreement trust holding the shares of WSBC. Plaintiff Mr. Chesley and WSBC are separate and independent entities." Judge Ruhlman went on to Order that WSBC and Rehme, as trustee, are "to disregard and not effectuate any of the Kentucky Orders" that apply to them.

This Court is not aware what documentation was submitted to Judge Ruhlman before his Order of August 26, 2015, but the documents submitted with the instant Motion paint a different picture of the current relationship among WSBC, Rehme, and Chesley. Those documents show that Chesley continues to maintain control over WSBC and to direct where money is paid. In

October 2014, he directed payment of over \$16 million in fees from the *Fannie Mae* litigation into two separate accounts. Plaintiffs argue that Chesley remains in control of the operating account for WSBC, signing every check drawn on the account. Documents show he has signed bank documents and a tax document on behalf of WSBC and has directed payments to his attorneys in this matter from a WSBC account in the amounts of \$164,145.88 to Frost Brown Todd and \$142,561.72 to Benton Benton Luedke in October 2014. Documents also show that Defendant Chesley is entitled to control the payee of fees from the tobacco litigation through the Castano Trust and in December 2014 he directed those fee payments into a WSBC account while he had directed previous payments to personal accounts.

Chesley disagrees, arguing that Plaintiffs were incorrect in asserting he signed all sixty-four of the checks they submitted that were drawn on WSBC's Fifth Third Bank account. Chesley responds that he only signed nine (14%) and that a majority of the checks were signed by Steven Horner, a CPA at WSBC, whose signature is "easily confused" with Chesley's "on small copies of checks because both start with the letters 'st' and have a capital 'c'." This admission that Chesley signed the nine checks does not help his argument that he and WSBC are separate entities.

As this Court stated in its June 23, 2015 Order, it has personal jurisdiction over Defendant Chesley and may exercise that jurisdiction to take action on the Judgment entered against him. See *Estates of Ungar ex rel. Strachman v. Palestinian Authority*, 715 F. Supp. 2d 253,262-64 (D.R.I. 2010); Restatement (Second) of Conflict of Laws § 55 (1971); see also KRS § 426.384.

This Court now finds that the Wind-Up Agreement is a sham, and that Defendant Chesley continues to control and direct WSBC. This Court may disregard a corporate entity

when there is "(1) domination of the corporation resulting in a loss of corporate separateness and (2) circumstances under which continued recognition of the corporation would sanction fraud or promote injustice." *Inter-Tel Technologies, Inc. v. Linn Station Properties, LLC*, 360 S.W.3d 152, 165 (Ky. 2012). Chesley is operating without regard to the Wind-Up Agreement or to the supposed purpose of WSBC's continued existence. He is exercising the right to control WSBC's activities, including directing the payment of fees and signing checks. The Court finds he is utilizing WSBC and its existence during what is supposed to be a wind-up period, to prevent Plaintiffs, his judgment creditors, from executing on their Judgment. The Court finds he is taking action to render himself insolvent while directing assets to WSBC, including fees from the Fannie Mae Litigation and tobacco litigation, and the transfer of \$59 million from his personal accounts to WSBC. Chesley is engaging in what the Supreme Court in *Inter-Tel Technologies* described as "an intentional scheme to squirrel assets into liability-free corporations while heaping liabilities upon an asset-free corporation." *Id.* at 168 (quoting *Sea-Land Services, Inc. v. Pepper Source*, 941 F.2d 519, 524 (Fifth Cir. 1991)). This Court recognizes that it should not disregard the corporate entity lightly, but it also should not "hesitate in those cases where the circumstances are extreme enough to justify disregard of an allegedly separate corporate entity." *Id.* at 168. In light of the evidence submitted by Plaintiffs, the Court finds that the Wind Up Agreement is a sham and that in reality Chesley retains control over WSBC.

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. The Plaintiffs Motion is GRANTED. Defendant Chesley shall immediately transfer his ownership interest in WSBC to the Plaintiffs through their undersigned counsel. This Court's June 23, 2015 Order remains in full effect. As directed in that Order, Defendant Chesley and his attorneys shall immediately turn

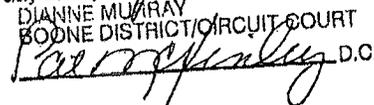
over to Plaintiffs' counsel any and all monetary payments made to Defendant Chesley from his interest in WSBC;

2. Defendant Chesley shall immediately direct the Trustee of the Castano Trust that all payments to which he and/or WSBC are entitled from the Castano Trust shall be paid directly to Plaintiffs' counsel; and
3. Defendant Chesley shall advise the Court in the matter of *Merilyn Cook, et al. v Rockwell Int'l Corp.*, Case No. 1:90-cv-00181-JLK, in the United States District Court for the District of Colorado that all payments or fees to which he and/or WSBC are entitled shall be paid directly to Plaintiffs through their undersigned counsel.

DATED this 25th day of September 2015.


JAMES R. SCHRAND, JUDGE
BOONE CIRCUIT COURT

COPIES TO: ALL ATTORNEYS OF RECORD

CERTIFICATE
I, DIANNE MURRAY, clerk of the Boone District/Circuit Court, hereby certify that I have mailed a copy of the foregoing order and notice to all parties hereto at their last known addresses or their counsel of record
This 25 day of Sept, 2015
DIANNE MURRAY
BOONE DISTRICT/CIRCUIT COURT
 D.C.