

IN THE SUPREME COURT OF OHIO

STATE *ex rel.* ANGELA M. FORD, ESQ., :
: **CASE NO. 2015-1470**
Relator, :
: **ORIGINAL ACTION**
-vs- : **IN PROHIBITION**
: **AND MANDAMUS**
HONORABLE ROBERT P. RUEHLMAN, :
: **Respondent.** :

MOTION OF PROPOSED INTERVENORS STANLEY M. CHESLEY AND THE LAW FIRM OF WAITE, SCHNEIDER, BAYLESS & CHESLEY CO., L.P.A. FOR LEAVE INSTANTER TO FILE A MEMORANDUM IN OPPOSITION TO RELATOR'S MOTION TO JOIN LINDA BRUMLEY AS A CO-RELATOR

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**MOTION OF PROPOSED INTERVENORS FOR
LEAVE INSTANTER TO FILE A MEMORANDUM IN OPPOSITION**

Pursuant to S.Ct.Prac.R. 4.01(A), Stanley M. Chesley (“Mr. Chesley”) and Waite, Schneider, Bayless & Chesley Co., L.P.A. (the “Waite Firm”) (collectively, the “Proposed Intervenor”) move for leave *instanter* to file a Memorandum in Opposition to the Motion of Relator Angela M. Ford, Esq., to Join Linda Brumley as a Co-Relator, which was coupled with Relator Angela Ford, Esq.’s Notice of Filing in the Hamilton County Action Made by Proposed Intervenor Stanley M. Chesley and Waite, Schneider, Bayless & Chesley Co., L.P.A.

Respectfully submitted,

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Stanley M. Chesley

MEMORANDUM IN SUPPORT

At the outset, the Proposed Intervenors note they possess a direct interest in the issues raised by Relator's Complaint, the Proposed Intervenors cannot expect that their interests will necessarily be fully represented by the existing parties, and the current parties will not be prejudiced by this intervention. As such, on October 5, 2015, the Proposed Intervenors filed a Motion to Intervene and tendered their proposed Motion for Judgment on the Pleadings.

As set forth in the Motion to Intervene, the Proposed Intervenors readily satisfy the requirements for intervention as of right under Civil Rule 24(A)(2), in that:

- (1) The Motion to Intervene was timely filed.
- (2) The Proposed Intervenors have an interest relating to the subject matter of this action; Mr. Chesley and the Waite Firm are the Plaintiffs, or Petitioners, in the underlying action, *Stanley M. Chesley, et al. v. Angela M. Ford, Esq., et al.*, Case No. A1500067, currently pending in the Hamilton County Court of Common Pleas in the court of Respondent, the Hon. Robert P. Ruehlman (the "Hamilton County Action").
- (3) As plaintiffs in the Hamilton County Action, the Proposed Intervenors' interest would be at least potentially impaired by the disposition of that action by means of an extraordinary writ granted by this Court. Rule 24(A)(2) "allows intervention as of right when the applicant claims an interest that may be impaired by the disposition of the action." *State ex rel. LTV Steel Co. v. Gwin*, 64 Ohio St. 3d 245, 247, 594 N.E.2d 616 (1992).
- (4) The Proposed Intervenors' interest may not be adequately represented by one of the existing parties, given that Relator is an opposing party, and Respondent's duty is to be an impartial adjudicator, not an advocate for any of the parties in a case.

Given their identified interests that merit granting of their Motion to Intervene, the Proposed Intervenors further request leave *instanter* to file a Memorandum in Opposition to the Motion of Relator Angela M. Ford, Esq., to Join Linda Brumley as a Co-Relator. As the proposed Memorandum explains, Relator is no longer a party to the Hamilton County Action, rendering the instant action moot, and Ms. Brumley is not a proper party to be joined under Civil Rule 19(A)(2)(a). As Exhibit A to this Motion, the Proposed Intervenors are tendering their proposed Memorandum in Opposition.

Respectfully submitted,

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CERTIFICATE FOR SERVICE

The undersigned certifies that on this 4th day of November, 2015, a true and correct copy of the foregoing was served via U.S. Mail, first class postage prepaid, on:

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**EXHIBIT
A**

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**PROPOSED INTERVENORS' MEMORANDUM IN OPPOSITION TO RELATOR'S
MOTION TO JOIN LINDA BRUMLEY AS A CO-RELATOR**

I. LAW AND ARGUMENT

A. The Proposed Intervenors Have An "Absolute" Right To Voluntarily Dismiss Their Claims Against Relator In The Court Below; Accordingly, Relator Is No Longer A Party And Her Petition Must Be Dismissed.

The Petition of Relator Angela Ford seeking a writ of mandamus and a writ of prohibition arises from the underlying matter of *Stanley M. Chesley, et al. v. Angela M. Ford, Esq., et al.*, Case No. A1500067, which is pending in the Hamilton County Court of Common Pleas before Respondent, the Hon. Robert P. Ruehlman (the "Hamilton County Action"). Ms. Ford, however, is no longer a party to that action. On October 21, 2015, the petitioners in the Hamilton County Action, Stanley M. Chesley ("Mr. Chesley") and Waite, Schneider, Bayless & Chesley Co., L.P.A. (the "Waite Firm") (collectively, the "Proposed Intervenors") filed a notice of Partial Voluntary Dismissal Without Prejudice under Rule 41(A)(1)(a) of the Ohio Rules of Civil Procedure.

As this Court has long held, an action that is voluntarily dismissed in such a manner "is treated as if it had never been commenced." *State ex rel. Fifth Third Mortgage Co. v. Russo*, 129 Ohio St. 3d 250, 2011-Ohio-3177, 951 N.E.2d 414, ¶ 17 (2011). Civil Rule 41(A)(1) provides, in relevant part, that:

[A] plaintiff, without order of court, may dismiss all claims asserted by that plaintiff against a defendant by ... : (a) filing a notice of dismissal at any time before the commencement of trial unless a counterclaim which cannot remain pending for independent adjudication by the court has been served by that defendant Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits of any claim that the plaintiff has once dismissed in any court.

On its face, Rule 41(A)(1)(a) allows a plaintiff to dismiss, without prejudice, an entire complaint or, as here, to dismiss all claims against one or more parties, absent the existence of a counterclaim. A notice of voluntary dismissal “is self-executing and completely terminates the possibility of further action on the merits of the case upon its mere filing, without the necessity of court intervention.” *State ex rel. Fifth Third Mortgage Co.*, at ¶ 17.¹

While Relator accuses the notice of dismissal filed by Proposed Relators constitutes “legal maneuvering,” “[t]he rule does not require [a] court to investigate the plaintiff’s motivation for dismissing the action,” inasmuch as “a plaintiff’s right under Civ.R. 41(A)(1)(a) to dismiss once, without prejudice, at any time prior to commencement of trial, *is absolute.*” *Sturm v. Sturm*, 63 Ohio St. 3d 617, 674-75, 590 N.E.2d 1214 (1992) (italics added). “A dismissal without prejudice leaves the parties as if no action had been brought at all.” *Denham v. City of New Carlisle*, 86 Ohio St. 3d 594, 596, 716 N.E.2d 184 (1999) (citation omitted).

Indeed, a Rule 41(A)(1)(a) operates to place the dismissed action or party beyond the jurisdiction of the court. “The plain import of Civ. R. 41(A)(1) is that once a plaintiff voluntarily dismisses all claims against a defendant, the court is divested of jurisdiction over those claims. ‘It is axiomatic that such dismissal deprives the trial court of jurisdiction over the matter dismissed. After its voluntary dismissal, an action is treated as if it had never been commenced.’” *State ex rel. Fifth Third Mortgage Co.*, 129 Ohio St. 3d 250, 2011-Ohio-3177, N.E.2d 414, at ¶

¹ Relator argues at pages 4-5 of her Notice of Filing in the Hamilton County Action that this Court’s issuance of a stay of the enforcement of Judge Ruehlman’s orders precludes the Proposed Intervenor from voluntarily dismissing Relator as a party. Not so. In light of the self-executing effect of a notice of dismissal, no action from Judge Ruehlman took place, and Relator offers no authority for her contention that the stay restrains the Proposed Intervenor from dismissing Relator as a party. Relator cites a court decision that is far off point, *State ex rel. Allstate Ins. Co. v. Gaul*, 131 Ohio App. 3d 419, 722 N.E.2d 616 (8th Dist. 1999). There, the Eighth District commented that the respondent judge exceeded his authority, and violated an alternative writ the Eighth District had issued, by modifying a previous order to allow pursuit of discovery against an individual “whom the court knew was no longer a participant in any fashion in the case before it.” *Id.* at 436. Here, by contrast, no alternative writ has been granted, Judge Ruehlman took no action, and no further proceeding has occurred with respect to Relator, who is no longer before the Hamilton County Court.

17 (citation omitted). If a lower court continues to exercise jurisdiction over the matter or party that has been dismissed under Rule 41(A)(1)(a), an action in prohibition lies to bar the court from further acting. *See, e.g., State ex rel. Hunt v. Thompson*, 63 Ohio St. 3d 182, 182, 586 N.E.2d 107 (1992) (granting writ). “[W]hen ... a case has been voluntarily dismissed under Civ. R. 41(A)(1), the trial court patently and unambiguously lacks jurisdiction to proceed,” with the sole exception of certain collateral issues not related to the merits of the action. *State ex rel. Fifth Third Mortgage Co.*, at ¶ 21.

Simply put, Relator is not a party to the Hamilton County Action, and, as a matter of law, she is treated as if she never was. Respondent, Judge Ruehlman, has filed a Suggestion of Mootness, noting that there is only one Relator in this action – Ms. Ford – and that, as a nonparty, she has no standing to request an extraordinary writ against the Hamilton County Court.² This conclusion is beyond peradventure. Relator’s nonparty status negates the first essential element of an action in prohibition, that “the lower court is about to exercise judicial authority” upon the petitioner. *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St. 3d 70, 74, 701 N.E.2d 1002 (1999). Similarly, the first two elements of action for writ of mandamus are also negated because Relator, as a nonparty to the Hamilton County Action, cannot establish a “clear legal right” to a ruling from the Respondent or that Respondent has a “clear legal duty” to grant such request. *State ex rel. Martinelli v. Corrigan*, 68 Ohio St. 3d 362, 363, 626 N.E.2d 954 (1994).

² In her Notice of Filing in the Hamilton County Action, Relator complains that the Proposed Intervenors “quietly filed” a notice of dismissal below “without notifying this Court of its filing.” In response, we note that Relator was served, through counsel, with a copy of the dismissal and that Judge Ruehlman, a party to this action, notified the Court via the filing of the Suggestion of Mootness. The Proposed Intervenors are not, as yet, parties to this action, as the Court has not acted on their Motion to Intervene. Relator never misses an opportunity, however, to manufacture false negatives.

Accordingly, Relator's claim is moot with nothing left for this Court to consider. Dismissal of the petition is thus compelled.

B. The Proposed Intervenors' Exercise Of Their Right To Voluntarily Dismiss Moots Relator's Petition Seeking An Extraordinary Writ.

Relator nevertheless argues that the Court should consider her Petition under the exception to the mootness doctrine for cases that are "capable of repetition, yet evading review." [Notice of Filing in the Hamilton County Action, at 2-5.] She argues that the Proposed Intervenors "can refile their lawsuit against Ms. Ford" and "cannot show that they are not reasonably likely to sue Ms. Ford again." [*Id.* at 3.]

That is not the test under Rule 41(A)(1), and the Proposed Relators have no such burden. Again, we note that a dismissing party's motivation is irrelevant because "a plaintiff's right under Civ.R. 41(A)(1)(a) to dismiss once, without prejudice, at any time prior to commencement of trial, is absolute." *Sturm v. Sturm*, 63 Ohio St. 3d 617, 674-75, 590 N.E.2d 1214 (1992). At pages 2-5, Relator's Notice cites a few cases for an argument that the Hamilton County Action is "capable of repetition, yet evading review," but fatal to her contention is that none of the cases involve Rule 41(A)(1). Relator's argument is circular logic – if a voluntarily dismissed party is nevertheless entitled to review and adjudication under the "capable of repetition" exception to the mootness doctrine, the absolute right afforded under Rule 41(A)(1) would be denied – in direct contravention of this Court's precedent. A voluntary dismissal would have no effect if dismissed parties could merely assert that the litigation must go on because the plaintiff "can refile" and "cannot show" it is not reasonably likely to sue again.

The decisions of this Court and Ohio lower courts uniformly confirm that a dismissal of an action or a party, voluntary or otherwise, makes review of a trial court's interlocutory orders moot, whether upon appellate review or in an action for an extraordinary writ. For example, in

State ex rel. Celebreeze v. Bd. of Commissioners of Allen County, 32 Ohio St. 3d 24, 512 N.E.2d 332 (1987), a consolidated appeal from dismissal of three actions in mandamus in two courts of appeal, the state Department of Human Services sought writs of mandamus to compel boards of commissioners of three counties to appropriate additional public assistance funds. Although the dismissals were not voluntary, pertinent here is that in one of the counties, the trial court dismissed the writ action and, with its dismissal, dissolved a preliminary injunction that it had issued against the state. On appeal, the Relator raised the issue of whether the trial court lacked subject-matter jurisdiction to issue an injunction requiring the state to pay funds from the public treasury. This Court refused to consider the issue, explaining that “[t]he injunction is no longer in force, having expired upon the resolution of the case by the trial court, and the issue of its propriety is therefore moot.” *Id.* at 26, n.3.

Similarly, Ohio courts apply Rule 41(A)(1) to hold that a voluntary dismissal renders moot appellate review of the matters dismissed. In *Kellie Auto Sales, Inc. v. Rahbars & Ritter Enterprises, LLC*, 10th Dist. Franklin No. 06AP-1243, 2007 WL 2325664 (Aug. 16, 2007), for example, the parties stipulated to a voluntary dismissal without prejudice of remaining claims under Rule 41(A)(1). Defendants raised as error the trial court’s previous denial of a summary judgment motion on a promissory estoppel claim. Citing this Court’s precedents that a claim so dismissed is treated as if it had never been filed, the Tenth District noted that a voluntary dismissal without prejudice dissolves interlocutory orders made by the court in that action and, there, “the voluntary dismissal of all remaining claims dissolved the portion of the trial court’s interlocutory order denying summary judgment on appellants’ promissory estoppel claim,

leaving nothing for this court to review on appeal. Thus, we find appellees' second cross-assignment of error to be moot, and we overrule it." *Id.* at ¶ 32.³

So, too, here, the notice of dismissal removed Ms. Ford as a party to the Hamilton County Action and dissolved the temporary injunction as to Ms. Ford. Thus the issue raised in this Petition as to whether Judge Ruehlman lacked subject-matter jurisdiction as to Relator is moot. Any further consideration by this Court would constitute an impermissible advisory opinion.

C. The Court Should Reject Relator's Improvident Request to Join One of Her Clients As A Co-Relator.

The foregoing is so settled that Relator attempts to evade the requirements of Ohio law by involuntarily joining Linda Brumley, one of the other defendants in the Hamilton County Action, as a Relator. This request should be summarily denied on several grounds. First, Relator lacks standing to even advance such a motion – she is not a proper party before this Court.

Second, Relator's citation to Civil Rule 19(A)(2)(a) is misplaced. She argues that the disposition of this action may adversely affect Ms. Brumley if she is not joined. Of course, it is telling that if such a statement were true, Relator, in the first, instance would have presumably joined Ms. Brumley as a Co-Relator given her fiduciary duty to her client. But it is a factually and legally inaccurate statement. This action is moot. There thus will be no disposition of this case within the meaning of Civil Rule 19 that "may as a practical matter impair or impede" Ms. Brumley's ability to protect an interest she might "claim relating to the subject of the action."

³ *Accord: Briggs v. FedEx Ground Package Sys., Inc.*, 157 Ohio App. 3d 643, 2004-Ohio-3320, 813 N.E.2d 43 (10th Dist. 2004), at ¶ 15 (holding plaintiff's filing of a Rule 41(A)(1)(a) notice of dismissal before trial court journalized its summary judgment ruling deprived the appellate court of jurisdiction, "rendering moot" the ruling appealed from); *Powell v. Kevin Coleman Mental Health Center*, 101 Ohio App. 3d 706, 707-08, 656 N.E.2d 423 (8th Dist. 1995) (same, holding plaintiff's voluntary dismissal before trial court journalized its interlocutory summary judgment ruling as a final ruling deprived it of jurisdiction to consider an appeal from summary judgment ruling).

Finally, Relator ignores the entire premise for her Petition seeking extraordinary writs. She argued that there is no case or controversy in the Hamilton County Action with respect to her because “Ms. Ford does not have an adverse legal interest to Chesley. Ms. Ford is the lawyer for Chesley’s judgment creditors – not a judgment creditor – and thus Chesley could have no claim against her individually.” [Relator’s Compl. at 3-4.] In other words, Relator contends that although you can sue an opposing party, you can’t sue the attorney of the opposing party. While the Proposed Intervenors differ with Relator on the merits of her argument and have established that this legal assertion is false, that is no longer an issue. The voluntary dismissal of Relator from the Hamilton County Action removes this issue from the Court’s consideration. And as Ms. Brumley is not an attorney, the factual assertion underlying this now-moot action is not properly presented through the proposed joinder.

CONCLUSION

For the above reasons, the Court should deny Relator’s Motion to Join Linda Brumley as a Co-Relator.

Respectfully submitted,

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The undersigned certifies that on this 4th day of November, 2015, a true and correct copy of the foregoing was served via U.S. Mail, first class postage prepaid, on:

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