

[Cite as *State ex rel. Clevenger v. D'Apolito*, 2004-Ohio-5129.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

STATE OF OHIO, EX REL.)	
DEAN CLEVINGER,)	
)	CASE NO. 04 MA 174
RELATOR,)	
)	
- VS -)	<u>OPINION</u>
)	<u>AND</u>
HONORABLE DAVID A. D'APOLITO,)	<u>JOURNAL ENTRY</u>
JUDGE, MAHONING COUNTY COURT)	
NO. 4, et al.,)	
)	
RESPONDENTS.)	

CHARACTER OF PROCEEDINGS: Petition for Writ of Prohibition.

JUDGMENT: Petition Dismissed.

APPEARANCES:

For Relator:

Attorney James Wagner
529 White Pond Drive
Akron, Ohio 44320

For Respondents:

Attorney Paul Gains
Prosecuting Attorney
Attorney Linette Stratford
Assistant Prosecuting Attorney
21 West Boardman Street, 6th Floor
Youngstown, Ohio 44503

JUDGES:

Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: September 23, 2004

PER CURIAM:

{¶1} Relator, Dean Clevenger, has filed with this court an original action in prohibition against Respondents, Judge David A. D'Apolito, as Judge of the Mahoning County Court No. 4, and Mahoning County Court No. 4, asking this court to bar Respondents from taking further action in case number 03-CVF-00840. Respondents filed a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted. Relator responded by filing a brief in opposition to the motion to dismiss. Respondents then timely responded to that motion. For the reason stated below, the petition for writ of prohibition is dismissed.

{¶2} Relator's writ alleges that Respondents lack subject matter jurisdiction to proceed in case number 03-CVF-00840. Case number 03-CVF-00840 was commenced when the law firm of Schiavoni, Schiavoni & Bush Co., L.P.A. filed an action in Mahoning County Court No. 4 against Dean Clevenger. Schiavoni sought to recover the sum of \$15,000 that had previously been awarded by the Industrial Commission as an amount of reasonable attorney fees for its representation of Clevenger in a workers compensation claim. Clevenger filed a motion to dismiss the complaint alleging that Mahoning County Court No. 4 lacked subject matter jurisdiction. The motion was ultimately overruled. Schiavoni then filed a motion for summary judgment, which was set for hearing.

{¶3} Clevenger then filed a complaint in prohibition with this court contending that Respondents lack subject matter jurisdiction over the Schiavoni complaint. The gravamen of Relator's argument in prohibition is that the Industrial Commission has exclusive jurisdiction over matters involving fee disputes between attorney and client, and thus the county court lacks jurisdiction to hear or decide matters involving fee disputes.

{¶4} A writ of prohibition is an extraordinary judicial writ issuing out of a court of superior jurisdiction and directed to an inferior tribunal commanding it to cease abusing or usurping judicial functions. *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 73, 1998-Ohio-275. The purpose of a writ of prohibition is to restrain inferior courts and tribunals from exceeding their jurisdiction. *Id.*

{¶5} As a general rule, in order for a writ of prohibition to issue, the Relator must prove that: (1) the lower court is about to exercise judicial authority; (2) the exercise of authority is not authorized by law; and (3) the Relator has no other

adequate remedy in the ordinary course of law if a writ of prohibition is denied. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 178.

{¶6} A writ of prohibition "tests and determines 'solely and only' the subject matter jurisdiction" of the lower court. *State ex rel. Eaton Corp. v. Lancaster* (1988), 40 Ohio St.3d 404, 409; *State ex rel. Staton v. Common Pleas Court* (1965), 5 Ohio St.2d 17, 21; *Jones*, 84 Ohio St.3d at 73. If an inferior court is without jurisdiction whatsoever to act, the availability or adequacy of a remedy of appeal to prevent the resulting injustice is immaterial to the exercise of supervisory jurisdiction by a superior court to prevent usurpation of jurisdiction by the inferior court. *State ex rel. Adams v. Gusweiler* (1972), 30 Ohio St.2d 326, 329; *State ex rel. Sladoje v. Belskis*, 149 Ohio App.3d 190, 197, 2002-Ohio-4505, at ¶ 42-47.

{¶7} Thus, given Relator's argument, if Respondents do lack subject matter jurisdiction then the writ of prohibition must be granted. However, after reviewing the facts and law in this case, it is clear that Respondents do not lack subject matter jurisdiction.

{¶8} Ohio Adm.Code 4121-3-24, 4123-3-24, and R.C. 4123.06 state that the Industrial Commission has exclusive jurisdiction to resolve disputes between a party and his representative for services rendered in industrial claims. The exhibits attached to Relator's complaint in prohibition are evidence that the Industrial Commission did resolve the fee dispute between Schiavoni and Clevenger and determined that Schiavoni was entitled to \$15,000. In case number 03-CVF-00840, Schiavoni is seeking to enforce the Industrial Commission's decision. Neither the statute nor the regulations prevent this type of action when the Commission has resolved the fee dispute amount. Ohio Adm.Code 4121-3-24, 4123-3-24; R.C. 4123.06. See, also, R.C. 1907.03 (stating that county courts have original jurisdiction in civil actions for disputes up to \$15,000).

{¶9} The Eighth Appellate District has stated, "[I]t is clear that the Appellant [the law firm] is obliged to submit any fee dispute, within one year of the payment of the amount claimed, to the Industrial Commission for favorable resolution before it can reduce such resolution to judgment via judicial action." *Julian Kahan & Assoc. Co., L.P.A. v. Greathouse* (June 30, 1994), 8th Dist. No. 65544. Thus, once the Commission has resolved the fee dispute then the attorney seeking payment may file suit to reduce the resolution to judgment in order to seek enforcement. *Id.*

{¶10} Moreover, our reasoning and holding in *Lonas v. Kail* (Jan. 25, 2000), 7th Dist. No. 491, supports this holding. In *Lonas*, the Commission had decided the reasonable legal fee for the services rendered. The client had paid that amount, however, the law firm then filed a breach of contract claim in the common pleas court claiming that the client owed them an additional amount pursuant to the contingency fee agreement that had been signed by the client and the law firm. We held that the common pleas court lacked jurisdiction to decide the issue because the law firm's complaint raised a fee dispute regarding their representation of the client at a hearing for workers' compensation benefits. *Id.*, citing Ohio Adm.Code 4121-3-24, 4123-3-24, R.C. 4123.06. In reaching this conclusion, we stated that while a law firm could not seek additional fees through a subsequent suit, it could seek to enforce a favorable decision by the Industrial Commission through a subsequent suit. *Id.*, citing *Adams v. Fleck* (1961), 171 Ohio St. 451, 460.

{¶11} In the matter at hand, the Schiavoni complaint does not raise a fee dispute; rather, it is an attempt to enforce the decision rendered by the Industrial Commission. Thus, the claim does not fall within the exclusive jurisdiction of the Industrial Commission. Furthermore, as stated previously, the Industrial Commission determined that Schiavoni was entitled to \$15,000. County courts have original jurisdiction to determine civil disputes involving up to \$15,000. R.C. 1907.03(A). As such, the county court does not lack subject matter jurisdiction and, accordingly, the writ of prohibition is not warranted. Respondents' motion to dismiss is hereby granted.

{¶12} Complaint dismissed. Costs taxed against Relator.

{¶13} Final order. Clerk to serve notice as provided by the Civil Rules.

VUKOVICH, J., concurs.
DONOFRIO, J., concurs.
DeGENARO, J., concurs.