

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Melissa Gass, Ashley Bennett,
and Andrew Koch, individually
and on behalf of all others
similarly situated,

 Petitioners

 v.

52nd Judicial District, Lebanon County,

 Respondent

No. 574 M.D. 2019

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM

FILED: October 23, 2019

This Opinion is written pursuant to the Pennsylvania Supreme Court's October 21, 2019 Order (Order) directing this Court to provide its rationale in support of the transfer of the above-captioned action to the Pennsylvania Supreme Court.

Background

On October 8, 2019, Melissa Gass, Ashley Bennett and Andrew Koch (collectively, Petitioners) filed a Class Action Petition for Review (Petition) in this Court's original jurisdiction challenging the 52nd Judicial District, Lebanon County's (Common Pleas Court) policy which prohibits individuals on probation or otherwise under court supervision from using medical marijuana (Policy).¹ In their Petition, Petitioners aver that the Common Pleas Court's Policy violates Pennsylvania's

¹ The Common Pleas Court September 1, 2019 Medical Marijuana Policy No. 5.1-2019 and 7.4-2019 had an effective date of October 1, 2019.

Medical Marijuana Act (MMA)² which expressly authorizes approved physicians to prescribe medical marijuana to Commonwealth residents who have a serious medical condition.³ Further, Petitioners allege that “[t]he plain language of the MMA prohibits courts from denying privileges to patients using medical marijuana in accordance with the MMA.” Petition at ¶ 96. Petitioners’ prayer for relief requests this Court, *inter alia*, to assume jurisdiction of this suit and enjoin the Common Pleas Court judges and probation staff from enforcing the Policy.

On October 9, 2019, Petitioners filed with this Court an Application for Relief in the Nature of a Preliminary Injunction (Application), wherein they allege: the Common Pleas Court “exceeded its authority when it barred individuals under its supervision from using medical marijuana[;]” the Common Pleas Court has no “authority to impose a blanket condition of probation requiring medical marijuana patients to abstain from using the drug[;]” and the Policy “stand[s] in direct contravention of the terms of the [MMA].” Application at ¶¶ 11, 13. Based on these averments, Petitioners request this Court to enjoin the Common Pleas Court, its agents, servants, and officers, and others from enforcing the Policy pending resolution of the litigation. *See* Application at 8.

On October 11, 2019, this Court transferred the Petition and the Application to the Pennsylvania Supreme Court because it lacked jurisdiction to grant the requested relief. On October 21, 2019, the Pennsylvania Supreme Court filed its Order directing this Opinion.

² Act of April 17, 2017, P.L. 84, 35 P.S. §§ 10231.101–10231.2110. The MMA specifically *prohibits* such punishment, specifying that patients “shall [not] be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege . . . solely for lawful use of medical marijuana[.]” Section 2103(a) of the MMA, 35 P.S. § 10231.2103(a).

³ The MMA prohibits medical marijuana use in correctional facilities; however, this prohibition is not applicable to the instant matter.

Discussion

Initially,

[t]he Constitution is explicit regarding the breadth of the [Pennsylvania Supreme] Court's authority over the Unified Judicial System. In the Supreme Court 'shall be reposed the supreme judicial power of the Commonwealth.' Pa. Const. art. V, § 2(a). Moreover, in addition to its judicial power, the Supreme Court has 'general *supervisory* and *administrative authority* over all the courts and [magisterial district judges]' Pa. Const. art. V, § 10(a). The Judicial Code helps to implement the primacy of the Supreme Court within the Unified Judicial System. *See* 42 Pa.C.S. § 501 (derived from Pa. Const. art. V, § 2). The General Assembly has also recognized that the Court has '[a]ll powers necessary or appropriate in aid of its original and appellate jurisdiction which are agreeable to the usages and principles of law' and any powers vested in it by statute, including the Judicial Code. 42 Pa.C.S. § 502. Section 1701 of the Judicial Code states that the Court has general *supervisory* and *administrative authority* over the judicial system and may exercise powers enumerated in subsequent provisions 'in aid' of that authority. 42 Pa.C.S. § 1701 (derived from Pa. Const. art. V, § 10(a)). The enumerated powers include authority over 'all courts and magisterial district judges' and over 'personnel of the system.' 42 Pa.C.S. §§ 1723, 1724. Personnel of the system include 'judicial officers,' among them magisterial district judges. *See* 42 Pa.C.S. § 102 (definitions: personnel of the system, judicial officers, judges).

In re Bruno, 101 A.3d 635, 663-64 (Pa. 2014) (emphasis added).

Moreover,

[t]o aid in the exercise of these powers, the [Pennsylvania Supreme] Court has such jurisdiction as 'shall be provided by law.' Pa. Const. art. V, § 2(c). Section 721 of the Judicial Code enumerates the types of cases over which the [Pennsylvania Supreme] Court has original jurisdiction: *habeas corpus*, *mandamus* or prohibition to courts of inferior jurisdiction, and *quo warranto* as to any officer of

statewide jurisdiction. 42 Pa.C.S. § 721. Sections 722 through 725 describe the Supreme Court's appellate jurisdiction. Section 726 addresses the Court's extraordinary jurisdiction to take cognizance, *sua sponte* or upon petition of a party, of any matter pending before an inferior tribunal 'involving an issue of immediate public importance.' 42 Pa.C.S. § 726. In addition, the schedule to Article V of the Constitution continues post-ratification the jurisdiction vested in the Supreme Court in 1968 -- such as the jurisdiction of the King's Bench. Pa. Const. Sched. art. V, § 1; *see, e.g., City of Phila[.] v. Int'l Ass'n of Firefighters, Local 22*, . . . 999 A.2d 555 ([Pa.] 2010) (Supreme Court exercised King's Bench jurisdiction to review arbitration award upon writ of certiorari, where right of appeal was statutorily prohibited).

Bruno, 101 A.3d at 665.

The Pennsylvania Supreme Court has expressly explained that "the onus of general superintendence over the courts of this Commonwealth has been allocated to [the Pennsylvania Supreme] Court." *Mun. Publ'ns, Inc. v. Court of Common Pleas of Phila. Cty.*, 489 A.2d 1286, 1288 (Pa. 1985). Section 721 of the Judicial Code provides that the Pennsylvania Supreme Court has "original but not exclusive jurisdiction of all cases of . . . [m]andamus or prohibition to courts of inferior jurisdiction." 42 Pa.C.S. § 721. The Judicial Code further states that "[t]he Commonwealth Court shall have original jurisdiction in cases of mandamus and prohibition to courts of inferior jurisdiction and other government units *where such relief is ancillary to matters within its appellate jurisdiction . . .*" Section 761(c) of the Judicial Code, 42 Pa.C.S. § 761(c) (emphasis added).

The *Municipal Publications, Inc.* Court described the Superior Court's jurisdiction under Section 741 of the Judicial Code:

The Superior Court derives all of its jurisdiction and powers from statute. Hence, no right of appellate review exists in that court in any instance except it be expressly authorized

by statute. Particularly significant is the fact that the Superior Court does not possess the powers of the Court of King's Bench. No statute confers such powers upon the Superior Court except for *the purely incidental right to issue a writ of mandamus or prohibition to a court of inferior jurisdiction ancillary to proceedings pending in the Superior Court under its appellate jurisdiction, i.e., by appeal authorized by statute.*

Id. at 1287-88 (citations omitted) (quoting *Bell Appeal*, 152 A.2d 731, 734 (Pa. 1959)).

“The legislature has limited the Superior Court’s original jurisdiction to instances in which an appeal has been lodged in that court and it becomes necessary to mandate or prohibit action by a lower court in aid of the Superior Court’s effective exercise of its appellate jurisdiction.” *Id.* at 1288.

This Court has held:

Since [S]ections 741 and 761(c) of the [Judicial Code] set forth identical language which permits the Superior Court and this [C]ourt to only issue writs of mandamus and prohibition ‘to courts of inferior jurisdiction . . . where such relief is ancillary to matters within its appellate jurisdiction . . .,’ our Supreme Court’s decision in *Municipal Publications* is controlling.

Leiber v. Cty. of Allegheny, 654 A.2d 11, 14 (Pa. Cmwlth. 1994).

Because the Judicial Code grants the Commonwealth Court jurisdiction in cases of “prohibition to courts of inferior jurisdiction and other government units where such relief is ancillary to matters within its appellate jurisdiction[.]” 42 Pa.C.S. § 761(c), where a request for a writ of prohibition is not ancillary to any matter within the Court’s appellate jurisdiction, this Court is without jurisdiction to grant the requested relief.

In the instant action, Petitioners requested relief in their Petition and Application is for this Court to assume jurisdiction, and declare that the Common Pleas

Court was without authority to impose the blanket probation condition and exceeded its authority by denying individuals under its supervision the rights granted to them under the MMA. In addition, because the Common Pleas Court acted outside its authority and its Policy is in direct contravention of the law, Petitioners request that the Common Pleas Court be prohibited from implementing and enforcing its Policy. While the prayer for relief is for a declaration and an injunction, Petitioners' requested relief is in actuality a request for a writ of prohibition. As the Pennsylvania Supreme Court stated in *Borough of Akron v. Pennsylvania Public Utility Commission*, 310 A.2d 271 (Pa. 1973): "[T]h[e] [Pennsylvania Supreme] Court in the past has been astute to recognize that petitions praying for 'injunctions' may in fact be imperfectly framed requests for writs of prohibition." *Id.* at 276. That is what transpired in the case sub judice.

The 'writ of prohibition' is an ancient common law writ through which a higher court exercises superintendence over an inferior judicial tribunal by prohibiting that tribunal from exercising jurisdiction over matters which the tribunal does not legally have jurisdiction over, where such exercise of jurisdiction by the inferior tribunal would result in damage and injustice. *Carpentertown Coal & Coke Co[.] v. Laird*, . . . 61 A.2d 426 ([Pa.] 1948).

A writ of prohibition is the exact counterpart of a writ of mandamus.

Lower Merion Sch. Dist. v. Montgomery Cty., 642 A.2d 1142, 1145 (Pa. Cmwlth. 1994).

Here, Petitioners are requesting this Court prohibit the Common Pleas Court from implementing and enforcing the Policy because the Common Pleas Court was without jurisdiction to issue a Policy that is contrary to Pennsylvania law. Even if the Common Pleas Court did have jurisdiction, it may have abused its discretion by

issuing a Policy that was contrary to Pennsylvania law. *See Commonwealth v. Vartan*, 733 A.2d 1258, 1263 (Pa. 1999) (“In addition to total absence of jurisdiction, our cases have extended the application of the writ of prohibition to encompass situations in which an inferior court, which has jurisdiction, exceeds its authority This latter situation has been termed an ‘abuse of discretion.’”) (quoting *Glen Mills Sch. v. Court of Common Pleas*, 520 A.2d 1379, 1381 (Pa.1987) (quotation marks omitted)). Thus, because Petitioners are asking this Court: to tell the Common Pleas Court that it had no jurisdiction to issue the type of Policy it did, or, in doing so, it exceeded its authority and violated the law of this Commonwealth; and, direct the Common Pleas Court judges not to implement or enforce the Policy, they seek a writ of prohibition. *See Cty. of Carbon v. Leibensperger*, 266 A.2d 632 (Pa. 1970).

In *Leibensperger*, the common pleas court granted a preliminary injunction sought by the county commissioners against a justice of the peace (JOP) to prevent the JOP from attempting to collect costs related to tax collection. Following a hearing, the court continued the preliminary injunction. The common pleas court “felt equity had jurisdiction to restrain an illegal act.” *Leibensperger*, 266 A.2d at 633. On review, the Supreme Court vacated the common pleas court’s order, concluding:

Although this suit was brought in equity and sought an injunction to restrain appellant from proceeding with the suits for costs, in actuality it was a request for a writ of prohibition. The writ of prohibition is the facility by which this Court exercises superintendence over inferior courts and keeps inferior courts within the limits of their rightful powers and jurisdiction, *Carpentertown Coal & Coke Co[.] v. Laird*, . . . 61 A.2d 426 ([Pa.] 1948), and in *Pennsylvania Labor Relations Board v. Butz*, . . . 192 A.2d 707 ([Pa.] 1963), we specifically held that the issuance of a writ of prohibition is not within the powers of a court of common pleas of this Commonwealth.

Leibensperger, 266 A.2d at 633.

Conclusion

Since the Petition and the Application are not “ancillary to proceedings pending in [this] Court under its appellate jurisdiction,” *Mun. Publ’ns, Inc.*, 489 A.2d at 1288 (emphasis omitted), and “[b]ecause [Petitioners] requested the issuance of a writ of [prohibition] against [the Common Pleas Court], i.e., a court of inferior jurisdiction, jurisdiction of this action properly rests with our Supreme Court.” *Commonwealth ex. rel Steadman v. Duncan*, 147 A.3d 57, 63 (Pa. Cmwlth. 2016).