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The Supreme Court of Ohio

FEB -4 2020

CLERK OF COURT  
SUPREME COURT OF OHIO

Kerr Buildings, Inc.

v.

Scott Bishop

v.

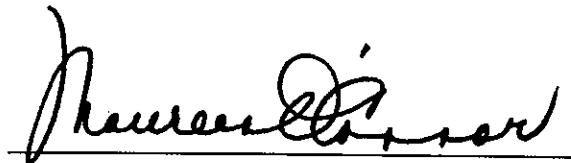
Jeremy Kerr

Case No. 2019-1362

E N T R Y

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Henry County Court of Appeals; No. 7-19-06)



Maureen O'Connor  
Chief Justice

# The Supreme Court of Ohio

FILED  
FEB 13 2020

CLERK OF COURT  
SUPREME COURT OF OHIO

State of Ohio ex. rel, Jeremy Kerr

v.

Judge John Collier

Case No. 2019-0888

JUDGMENT ENTRY

APPEAL FROM THE  
COURT OF APPEALS

This cause, here on appeal from the Court of Appeals for Henry County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is affirmed, consistent with the opinion rendered herein.

It is further ordered that appellant's request for an order pursuant to S.Ct.Prac.R. 16.07(B) and request for an immediate order pursuant to S.Ct.Prac.R. 16.07(B) are denied as moot.

It is further ordered that a mandate be sent to and filed with the clerk of the Court of Appeals for Henry County.

(Henry County Court of Appeals; No. 7-19-05)



Maureen O'Connor  
Chief Justice

The official case announcement, and opinion if issued, can be found at  
<http://www.supremecourt.ohio.gov/ROD/docs/>

APPENDIX B

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Kerr v. Collier*, Slip Opinion No. 2020-Ohio-457.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

**SLIP OPINION No. 2020-OHIO-457**

**THE STATE EX REL. KERR, APPELLANT, v. COLLIER, JUDGE, APPELLEE.**

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Kerr v. Collier*, Slip Opinion No. 2020-Ohio-457.]

*Prohibition—Court of common pleas had subject-matter jurisdiction to enter charging order and appoint receiver—Court of appeals’ judgment dismissing complaint affirmed.*

(No. 2019-0888—Submitted November 13, 2019—Decided February 13, 2020.)

APPEAL from the Court of Appeals for Henry County, No. 7-19-05.

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**Per Curiam.**

{¶ 1} This appeal involves a request by appellant, Jeremy Kerr, for a writ of prohibition to vacate charging orders and receivership orders concerning Kerr’s membership interests in two limited-liability companies. The Third District Court of Appeals dismissed Kerr’s complaint, concluding that appellee, Henry County Court of Common Pleas Judge John Collier, did not patently and unambiguously lack jurisdiction to issue the orders. After Judge Collier did not file a merit brief in

this appeal, Kerr filed two motions asking this court to reverse the court of appeals' judgment under S.Ct.Prac.R. 16.07(B). We affirm the court of appeals' judgment and deny Kerr's motions as moot.

### **Background**

{¶ 2} In 2011, Kerr Buildings, Inc., of which Kerr was the president, sued Scott Bishop regarding a contract dispute in the Henry County Court of Common Pleas, with Judge Collier presiding. Bishop asserted a counterclaim against Kerr Buildings and a third-party complaint against Kerr individually, and the lawsuits resulted in a monetary judgment of almost \$80,000 against Kerr Buildings and Kerr. In May 2013, at Bishop's request, Judge Collier entered a charging order concerning Kerr's membership interests in two limited-liability companies. *See* R.C. 1705.19. The charging order required that any payments to which Kerr would be entitled from the limited-liability companies be paid to Bishop. In January 2018, Judge Collier entered a nunc pro tunc charging order. In August 2013, also at Bishop's request, Judge Collier appointed a receiver over Kerr and Kerr Buildings. In March 2014, Kerr filed a motion asking Judge Collier to set aside the receivership order, arguing that the order violated Kerr's due-process rights because he was not properly served with Bishop's motion asking for the order. Judge Collier denied the motion, and the Third District affirmed. *See Kerr Bldgs., Inc. v. Bishop*, 3d Dist. Henry No. 7-14-07, 2014-Ohio-5391.

{¶ 3} In April 2018, Judge Collier entered an order titled "Amended Orders to Receiver." Kerr alleges that he filed multiple motions asking Judge Collier to vacate the amended receivership order and that he appealed Judge Collier's decisions denying those motions. He alleges that the court of appeals dismissed his appeals *sua sponte* as improper requests for reconsideration. In April 2019, Kerr filed in the Third District a complaint for a writ of prohibition against Judge Collier seeking to invalidate the charging order, the nunc pro tunc charging order, the receivership order, and the amended receivership order. In general terms, Kerr's complaint

alleges that the orders were entered in violation of his due-process rights, that some of the powers granted to the receiver are unauthorized by law, and that the charging orders exceed Judge Collier's authority under R.C. 1705.19.

{¶ 4} Judge Collier moved to dismiss Kerr's complaint under Civ.R. 12(B)(6). The court of appeals granted the motion, holding that Judge Collier did not patently and unambiguously lack jurisdiction to enter a charging order or to appoint a receiver.

{¶ 5} Kerr appealed to this court as of right.

#### Analysis

{¶ 6} "A motion to dismiss for failure to state a claim upon which relief can be granted tests the sufficiency of the complaint." *Volbers-Klarich v. Middletown Mgt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 11. Dismissal of a prohibition complaint under Civ.R. 12(B)(6) is appropriate "if, after presuming the truth of all factual allegations of the complaint and making all reasonable inferences in [the relator's] favor, it appears beyond doubt that he can prove no set of facts entitling him to the requested extraordinary writ of prohibition." *State ex rel. Hemsley v. Burnham Unruh*, 128 Ohio St.3d 307, 2011-Ohio-226, 943 N.E.2d 1014, ¶ 8.

{¶ 7} To be entitled to a writ of prohibition, a relator generally must show that a court is about to exercise judicial power without authority and that there is no adequate remedy in the ordinary course of the law. *State ex rel. Sliwinski v. Burnham Unruh*, 118 Ohio St.3d 76, 2008-Ohio-1734, 886 N.E.2d 201, ¶ 7. But Kerr argues that he need not show that he lacks an adequate remedy at law because Judge Collier patently and unambiguously lacked jurisdiction to enter the orders. *See State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 15. Therefore, based on the allegations in the complaint, Kerr's prohibition claim can succeed only if he establishes that Judge Collier patently and unambiguously lacked jurisdiction.

{¶ 8} Kerr challenges the propriety of the charging orders and the receivership orders, but even if certain aspects of the orders are improper, he has not shown that Judge Collier patently and unambiguously lacked jurisdiction to enter them. R.C. 1705.19(A) authorizes a common pleas court to enter a charging order against a judgment debtor's membership interest in a limited-liability company. And R.C. 2735.01(A)(4) authorizes a common pleas court to appoint a receiver "after judgment, to carry the judgment into effect." "Typically, a court will deny relief in prohibition when a respondent judge has general subject-matter jurisdiction and will deem any error by the judge to be an error in the exercise of jurisdiction." *State ex rel. Sponaugle v. Hein*, 153 Ohio St.3d 560, 2018-Ohio-3155, 108 N.E.3d 1089, ¶ 24.

{¶ 9} Because Judge Collier had subject-matter jurisdiction to enter a charging order and to appoint a receiver, Kerr has not shown that the judge patently and unambiguously lacked jurisdiction. The court of appeals, therefore, correctly dismissed Kerr's complaint.

{¶ 10} As a final matter, Kerr filed two motions asking us to reverse the court of appeals' judgment because Judge Collier did not file a merit brief in this case. S.Ct.Prac.R. 16.07(B) provides that if the appellee fails to timely file a merit brief, we "may accept the appellant's statement of facts and issues as correct and reverse the judgment if the appellant's brief reasonably appears to sustain reversal." Because Kerr has not shown that we should reverse the court of appeals' judgment, we deny his motions as moot.

Judgment affirmed.

O'CONNOR, C.J., and KENNEDY, FRENCH, FISCHER, DEWINE, DONNELLY, and STEWART, JJ., concur.

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Jeremy Kerr, pro se.

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COMMON PLEAS COURT

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CONNIE L. SCHMITKEY  
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF HENRY COUNTY, OHIO

Kerr Buildings, Inc. ) Case No. 11-CV0001  
Plaintiff, ) MOTION FOR CHARGING ORDER  
vs. )  
Scott Bishop ) Alan J. Lehenbauer (0023941)  
Defendant, ) Attorney for Defendant Bishop  
vs. ) The McQuades Co., L.P.A.  
PO Box 237  
Swanton, OH 43558  
Phone: (419) 826-0055  
FAX: (419) 825-3871  
E-mail: mcquadelaw@embarqmail.com  
Jeremy Kerr )  
Third-Party Defendant. )

Now comes defendant, Scott Bishop, by and through counsel, and pursuant to Ohio Rev. Code ("O.R.C.") § 1705.19, and moves this Court for a charging order against third-party defendant, Jeremy Kerr's limited liability interests for the reasons set forth in the following Memorandum in Support.

Respectfully submitted,



Alan J. Lehenbauer  
Attorney for Defendant Bishop

MEMORANDUM IN SUPPORT

As set forth in the Affidavit of Defendant Bishop's counsel attached to this Memorandum, on October 16, 2012, judgment was rendered in the within case against Third-Party Defendant, Jeremy Kerr, individually and/or dba Kerr Buildings Inc., for the sum of

\$79,648.00, together with interest thereon at the statutory rate of three percent per annum from October 16, 2012, and costs in the amount of \$25.00. The entire judgment balance remains unpaid.

As also set forth in the attached Affidavit, upon information and belief, Third-Party Defendant, Jeremy Kerr, has an interest in the following limited liability company:

Beaver Creek Development Co., LLC  
13926 Defiance Pike  
Rudolph, OH 43462

As to limited liability company interests, O.R.C.

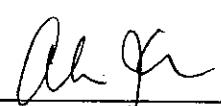
§1705.19(A) provides:

If any judgment creditor of a member of a limited liability company applies to a court of common pleas to charge the membership interest of the member with payment of the unsatisfied amount of the judgment with interest, the court may so charge the membership interest. To the extent the membership interest is so charged, the judgment creditor has only the rights of an assignee of the membership interest as set forth in section 1705.18 of the Revised Code. Nothing in this chapter deprives a member of the member's statutory exemption.

Clearly, Defendant Bishop is entitled under O.R.C. §1705.19 to an order charging Third-Party Defendant, Jeremy Kerr's interest in the limited liability company with payment of the unsatisfied balance of the judgment.

WHEREFORE, Defendant Bishop respectfully requests this Court to enter an order charging Third-Party Defendant, Jeremy Kerr's interest in the limited liability company, Beaver Creek Development Co., LLC, with payment of the unsatisfied judgment. An Order for this Court's convenience is submitted herewith.

Respectfully submitted,

  
\_\_\_\_\_  
Alan J. Lehenbauer  
Attorney for Defendant Bishop

PROOF OF SERVICE

I hereby certify that the foregoing Motion and the accompanying Affidavit and Charging Order were sent by certified mail, return receipt requested, as well as by first-class U.S. mail, postage prepaid, to: Jeremy Kerr, 13926 Defiance Pike, Rudolph, OH 43462, this 29th day of May, 2013. + Attorney Mark Tolles 920 N. MAIN, BOWLING GREEN OH 43402

*Al J. Lehenbauer*

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Alan J. Lehenbauer  
Attorney for Defendant Bishop

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COMMON PLEAS COURT

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CONNIE L SCHMITKEY  
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF HENRY COUNTY, OHIO

Kerr Buildings, Inc. ) Case No. 11-CV0001  
Plaintiff, ) CHARGING ORDER  
vs. )  
Scott Bishop ) Alan J. Lehenbauer (0023941)  
Defendant, ) Attorney for Defendant Bishop  
vs. ) The McQuades Co., L.P.A.  
PO Box 237  
Swanton, OH 43558  
Phone: (419) 826-0055  
FAX: (419) 825-3871  
E-mail: mcquadelaw@embarqmail.com  
Jeremy Kerr )  
Third-Party Defendant. )

This day this cause came to be heard upon Motion for Charging Order filed by Defendant, Scott Bishop, together with a supporting Affidavit of Defendant's counsel, seeking an Order charging Third-Party Defendant, Jeremy Kerr's interest in the following limited liability companies:

Beaver Creek Development Co., LLC  
13926 Defiance Pike  
Rudolph, OH 43462

Beaver Creek Properties, LLC  
13926 Defiance Pike  
Rudolph, OH 43462

(hereinafter referred to as the "Limited Liability Companies")

The Court, being duly advised in the premises, finds that said Motion is well taken.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that said Motion is hereby granted, and that Third-Party Defendant's limited liability interests in the Limited Liability Companies are

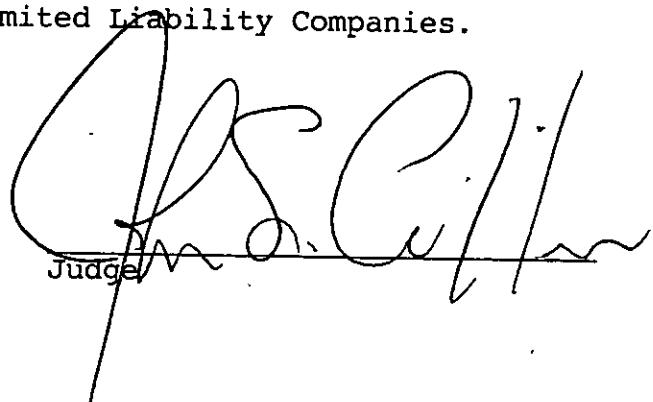
be made instead to Defendant Bishop in reduction of his judgment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Limited Liability Companies and the members comprising the Limited Liability Company make no payments, including but not limited to distributions of earnings and withdrawals of capital, to Third-Party Defendant, Jeremy Kerr, on account of his interests in the Limited Liability Companies until such time as Defendant Bishop's judgment has been satisfied of record.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Bishop serve copies of this ORDER by certified mail, return receipt requested, upon the Limited Liability Companies, by serving Third-Party Defendant, Jeremy Kerr, as well as those persons or entities whom Defendant Bishop has reason to believe may have a membership interest in the Limited Liability Companies.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Bishop be and hereby is authorized to obtain a writ of execution and to proceed with execution sale of Third-Party Defendant, Jeremy Kerr's interests in the Limited Liability Companies.

Dated: \_\_\_\_\_



Judge

OPY

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IN THE COMMON PLEAS COURT OF HENRY COUNTY, OHIO

|                        |   |   |
|------------------------|---|---|
| Kerr Buildings, Inc.   | ) | Case No. 11-CV0001  |
| Plaintiff,             | ) | <u>ORDER APPOINTING RECEIVER</u>  |
| vs.                    | ) |   |
| Scott Bishop           | ) | Alan J. Lehenbauer (0023941)<br>Attorney for Defendant Bishop<br>The McQuades Co., L.P.A. |
| Defendant,             | ) | PO Box 237<br>Swanton, OH 43558   |
| vs.                    | ) | Phone: (419) 826-0055<br>FAX: (419) 825-3871  |
| Jeremy Kerr            | ) | E-mail: mcquadelaw@embarqmail.com   |
| Third-Party Defendant. | ) |   |

This cause came on to be heard on Defendant, Scott Bishop's Motion for Appointment of a Receiver, and the Court having considered Scott Bishop's Motion for Appointment of a Receiver, and being duly advised in the premises, the Court now finds as follows:

A. Kerr Buildings, Inc., filed a Complaint on January 3, 2011. Scott Bishop filed an Answer, Counterclaims and Cross-claims against Jeremy Kerr ("Kerr") on or about May 3, 2011. This Court entered a Judgment Entry on October 16, 2012, dismissing the Complaint of Kerr Buildings, Inc. and granting judgment in favor of Scott Bishop in the amount of \$79,648.00 against Kerr Buildings and Kerr.

B. Kerr Buildings, Inc. and Kerr are in default of their obligations to Scott Bishop.

C. Kerr has an interest in the following limited liability companies:

Beaver Creek Development Co., LLC  
13926 Defiance Pike  
Rudolph, OH 43462

Beaver Creek Properties, LLC  
13926 Defiance Pike  
Rudolph, OH 43462

(hereinafter referred to as the "Limited Liability Companies")

D. This Court issued a Charging Order on May 29, 2013, concerning the following parcels of real estate, in which an interest is held by Kerr and/or the Limited Liability Companies:

- Parcel: X78-509-350307009000  
Address: 13345 Ash, Weston, OH 43569
- Parcel: A01-311-040000009500  
Address: 10730 Cygnet Rd., Cygnet, OH 43413
- Parcel: I32-410-240000021000  
Address: 13926 Defiance Pike, Rudolph, OH 43462
- Parcel: P60-300-330407001000  
Address: 28926 Simmons Rd., Perrysburg, OH 43551

E. Scott Bishop recorded with the Wood County Recorder liens on the aforesaid parcels of real estate.

F. Kerr was convicted on three felony counts of forgery and other offenses by the Court of Common Pleas of Wood County for incidents unrelated to the facts in the above captioned case. Kerr is now incarcerated in the Ohio Department of Rehabilitation and Correction and is serving a stated prison term of 7 years and 8 months for these convictions.

G. It is in the best interest of Kerr and Kerr Buildings, Inc., and their respective creditors that a receiver be appointed over Kerr and Kerr Buildings, Inc.

H. Scott Bishop is entitled to the appointment of a receiver pursuant to Ohio Revised Code § 2735.01(C).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. Christopher M. Frasor ("the Receiver") is hereby appointed the receiver for all of the real and personal property, general intangibles, and all other assets of Kerr Buildings, Inc. and Kerr of whatever kind or nature, and the Receiver shall have all authority and power of a receiver under Ohio law and as ordered by this Court.

2. The Receiver shall take immediate possession, control, management, operation and charge of Kerr's businesses, including but not limited to Kerr Buildings, Inc. and Beaver Creek Development Co., LLC. Pursuant to Ohio Revised Code § 2735.04 and under the control of this Court, the Receiver shall have all authority and power of a receiver under Ohio law, including the following powers and duties:

a) The Receiver shall take immediate possession, control, management and charge of the accounting books and records of Kerr and Kerr Buildings, Inc., of whatever nature and wherever located, in the possession of Kerr and Kerr Buildings, Inc., or any other person or entity, including all information regarding the assets, liabilities, equity, income and expenses of Kerr and Kerr Buildings, Inc. The Receiver shall take immediate possession, control, management and charge of all of Kerr and Kerr Building, Inc.'s financial statements (whether consolidated or by individual entity), ledgers and journals, balance sheets, trial balances, statements of cash flows, income statements, statements of retained earnings, accounting journals and books of original entry, including but not limited to (1) accounts receivable agings and any other documentation which indicate the amounts owing from customers on accounts receivable and from such amounts are or were owing and when any amounts were collected and deposited, and the

use, application or disposition thereof; (2) fixed asset ledgers, schedules or records documentation and/or appraisals Kerr and/or Kerr Building, Inc.'s equipment, inventory, furnishings, and supplies; (3) inventory listings or other detail; (4) all lists, schedules or records pertaining to Kerr and Kerr Building, Inc.'s stocks, bonds, shares or interests in any mutual fund, proprietorship, general or limited partnership, corporation, or limited liability company, all notes or other instruments owing to Kerr and/or Kerr Building, Inc., and information regarding any other intangibles of Kerr and/or Kerr Building, Inc.; (5) all information and documentation which relates or pertains to any checking, saving, banking and money management accounts of any kind or nature of Kerr and/or Kerr Buildings, Inc., or into which any proceeds of the collection or sale of any asset (including accounts receivable) of Kerr and/or Kerr Buildings, Inc., have been deposited; (6) all accounts payable and receivable documentation and information and all correspondence or written documents regarding negotiations with current accounts or proposed accounts; (7) all information of whatever type or nature, regarding the payroll and benefits of the owners, management, officers and employees of Kerr and/or Kerr Buildings, Inc., including wage or salary information, expense reimbursement information, medical insurance information, or other employee deductions withheld or to be withheld, and all information regarding the trust fund or withholding taxes whether federal, state, or local and any information regarding any and all of the employer matching obligations or the employer payroll tax obligations; (8) all information and documentation of any asset transfers by Kerr and/or Kerr Buildings, Inc., in the past four years; (9) all information and documentation regarding the

federal, state and local tax liabilities of Kerr and/or Kerr Buildings, Inc., including any and all federal, state and local tax returns filed or unfiled, and any documents generated during the preparation and filing of tax returns; (10) all contracts (including, without limitation, insurance policies) and leases to which Kerr and/or Kerr Buildings, Inc., are a party or have been a party; (11) all information and documentation of any other financial transaction or interest in and to any asset of Kerr and/or Kerr Buildings, Inc., which may be necessary or pertinent to the Receiver's operation and management of Kerr and Kerr Buildings, Inc.'s assets; and (12) any documentation that relates or pertains to Kerr and/or Kerr Building, Inc., and is kept in the ordinary course of business in connection with the record-keeping or accounting. The information described in this subparagraph shall hereinafter be referred to as the "Books and Records."

b) The Receiver shall take immediate possession, control, management and charge of all assets and property of Kerr and Kerr Buildings, Inc., of whatever nature or kind, consisting of all personal property and all real property, including any leasehold interests and the following parcels located in Wood County, Ohio:

- Parcel: X78-509-350307009000  
Address: 13345 Ash, Weston, OH 43569
- Parcel: A01-311-040000009500  
Address: 10730 Cygnet Rd., Cygnet, OH 43413
- Parcel: I32-410-240000021000  
Address: 13926 Defiance Pike, Rudolph, OH 43462
- Parcel: P60-300-330407001000  
Address: 28926 Simmons Rd., Perrysburg, OH 43551

and all cash or cash equivalents including, but not limited to, rights, title and interest in and to all bank accounts of Kerr

and/or Kerr Buildings, Inc., all interests under insurance policies and proceeds thereof, all accounts and notes receivable, all inventory of any type or nature, all furniture, fixtures, equipment, computers (hardware and software), and all general intangibles of Kerr and/or Kerr Buildings, Inc., all choses in action and causes of action, including avoidance actions for transfers of any of the assets of Kerr and/or Kerr Buildings, Inc., for less than equivalent value or other improper transfers against the transferees of those assets, and any other asset or interest owned by Kerr and/or Kerr Buildings, Inc., or in which Kerr and/or Kerr Buildings, Inc., assert an interest which has any value (collectively, "the Assets"), and the Books and Records and the Assets are hereby placed in *custodia legis* and are subject to the exclusive jurisdiction of this Court.

c) The Receiver shall have the authority to operate and manage the businesses of Kerr and Kerr Buildings, Inc., as he deems prudent in his sole and exclusive discretion throughout this litigation, subject to further order of this Court. The Receiver shall preserve and care for any and all of the assets and utilize any and all of the Assets to preserve and maximize the value of the Assets.

d) The Receiver is authorized to collect all profits, rents, proceeds and revenues of any nature whatsoever generated from the Assets and/or the business operations of Kerr and/or Kerr Buildings, Inc. (including, without limitation, insurance proceeds), and to pay all necessary expenses relating to said operations, as he deems prudent in his sole discretion.

e) The Receiver shall have the authority to maintain or purchase insurance from any agent or carrier, of any type reasonably necessary or desirable, on all the Assets, subject to

maintaining adequate coverage appropriately assigned to Scott Bishop and naming Scott Bishop as a loss payee thereof.

f) The Receiver is authorized to establish or maintain one or more bank accounts in the Receiver's name for his operations as Receiver in this matter at any federally insured bank with offices in Wood County, Ohio. The Receiver shall keep a true and accurate account of any and all receipts and disbursements which the Receiver shall receive or make as Receiver in the course of the operation of the businesses of Kerr and/or Kerr Buildings, Inc.

g) Upon request of Scott Bishop, and subject to further Court Orders, the Receiver is authorized to negotiate and effect an orderly sale, transfer, or assignment of all or a portion of any of the Assets (including collection of accounts receivable and proceeds of available insurance) in or outside of the ordinary course of business of Kerr and/or Kerr Buildings, Inc., or of all or a portion of Kerr and/or Kerr Buildings, Inc.'s businesses as a going concern and, from the proceeds thereof, to pay the secured and unsecured indebtedness of Kerr and/or Kerr Buildings, Inc., including indebtedness which arises during the course of the Receiver's operation of the businesses of Kerr and/or Kerr Buildings, Inc., in accordance with the respective priorities of such obligations.

h) The Receiver is authorized but not required to institute, prosecute, or intervene in any lawsuit, summary proceeding or investigation against any other person(s) or entity(ies) to preserve and/or maximize the value of the Assets or to obtain possession of any of the Assets unlawfully in the possession of third parties.

i) The Receiver is authorized but not required to

or the Receivership estate based upon the non-payment of such taxes or utilities prior to the date of this Order and from attempting to collect taxes and utility charges from the Receiver pre-dating the date of this Order.

4. Kerr and Kerr Buildings, Inc., and any persons, firms or entities acting under the direction of Kerr and/or Kerr Buildings, Inc., and any third parties, persons, firms or entities, shall, upon presentation of a copy of this Order, identify the location of and deliver to the Receiver, any and all receivership property, both the Books and Records and the Assets, in the possession or under the control of such parties; and all persons are enjoined and restrained (a) from payment of any amounts owing to Kerr and/or Kerr Buildings, Inc., to anyone other than the Receiver and (b) from in any way disturbing or interfering with the collection, management or sale of any of the Assets.

5. All creditors, claimants, bodies politic, parties in interest, and their respective attorneys, servants, agents, and employees, and all other persons, firms, and corporations be, and they hereby are, jointly and severally, enjoined and stayed from commencing or continuing any action at law or suit or proceeding in equity to foreclose any lien or enforce any claim against Kerr and/or Kerr Buildings, Inc., or the Books and Records or Assets, or against the Receiver in any court. The parties are further stayed from executing or issuing or causing the execution or issuance out of any Court of any writ, process, summons, attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with, or enforcing any claim or lien upon any property owned by or in the possession of Kerr, Kerr Buildings, Inc., or the Receiver, and from doing any act or thing whatsoever to interfere with the

Receiver in the discharge of his duties in these proceedings or with the exclusive jurisdiction of this Court over Kerr and Kerr Buildings, Inc., the Books and Records and Assets and the said Receiver. Notwithstanding anything contained in the foregoing, Scott Bishop may foreclose his liens on the real property owned, in whole or in part, by Kerr and/or Kerr Buildings, Inc.

6. Kerr and Kerr Buildings, Inc., and their agents and employees, and any other party shall immediately turn over to the Receiver any and all Books and Records.

7. Kerr and Kerr Buildings, Inc., and their agents and employees, and any other party shall immediately turn over to the Receiver, all sums in existence on the date hereof that are related or pertain to, or derived from the Assets, including, but not limited to (a) all cash on hand; (b) all cash equivalents and negotiable instruments (such as checks, notes, drafts or other related documents or instruments); and (c) all sums held in accounts in any financial institutions, including but not limited to, all sums of any kind relating to the use, enjoyment, possession, improvement or occupancy of all or any portion of the Assets.

8. Except as directed by the Receiver, Kerr, Kerr Buildings, Inc., their affiliates, agents, officers, directors, shareholders, members, employees, representatives or creditors, and all other persons or entities, are hereby prohibited from undertaking any act for or on behalf of Kerr and/or Kerr Buildings, Inc., interfering in any way with the acts of the Receiver, and from in any way, manner or means, wasting, disposing of, transferring, selling, assigning, pledging, canceling, concealing, interfering with, or hypothecating any of the Books and Records or the Assets. Upon the request of the Receiver, the

foregoing persons and entities shall cooperate and affirmatively assist the Receiver in making available to the Receiver or his agents, the Books and Records and the Assets. Nothing in this paragraph shall be construed to require a waiver of any attorney-client privilege.

9. The Receiver, and his agents, including his counsel and accountants, shall be entitled to reasonable compensation for services rendered and reimbursement for expenses (a) related to the Receiver's duties, rights, and obligations under this Order or any future orders of the Court and applicable law; (b) related to the administration, management, and protection of the Assets; or (c) related to the defense or prosecution of any claim or suit brought against the Receiver or by the Receiver against any person or entity. Such compensation of the Receiver and his agents, his counsel and his accountants shall be reviewed by the Court and awarded from the Receivership estate.

10. The Receiver shall be compensated based upon his normal billing rate of \$150.00 per hour and the Receiver shall be reimbursed for all reasonable and necessary out of pocket costs and expenses. Travel time, if necessary, will be paid at \$100.00 per hour. With respect to seeking compensation and reimbursement of costs and expenses for the Receiver, his agents or legal counsel, the Receiver shall describe such compensation, expenses and reimbursement in applications which will be submitted to the Court for approval prior to payment.

11. The Receiver shall have full and unrestricted access to all of the Assets, and Kerr and Kerr Buildings, Inc., and their officers, directors, shareholders, employees and agents, and any other party are directed to take all steps necessary to give the Receiver access to the premises of Kerr and Kerr Buildings, Inc.,

and to give the Receiver all keys to the facilities of Kerr and Kerr Buildings, Inc.

12. In carrying out the duties as set forth herein, the Receiver is entitled to act in the exercise of his own sound business judgment as he deems appropriate within his sole and exclusive discretion. The Receiver shall not be liable for any action taken or not taken by him in good faith and shall not be liable for any mistake of fact or error of judgment or for any acts or omissions of an kind unless caused by the willful misconduct or gross negligence on the part of the Receiver.

13. The Receiver may, from time to time, make payments to Scott Bishop, and his successors and assigns, on the judgment in the amount of \$79,648.00 against Kerr and Kerr Buildings, Inc., through such acts including but not limited to, the collection of accounts receivable and insurance proceeds and sale of the real and personal property in which Scott Bishop, and his successors and assigns, have a lien interest.

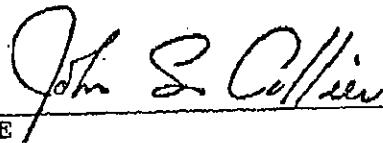
14. The Receiver shall serve without bond.

15. The terms of this Order shall continue in full force and effect unless and until further order of this Court.

IT IS SO ORDERED.

DATE

JUDGE



cc: Receiver Christopher M. Frasor  
Attorney Alan J. Lehenbauer  
Attorney Mark Tolles  
Jeremy Kerr, Inmate #A686150

FILED  
HENRY COUNTY  
COMMON PLEAS COURT

2010 JAN 25 P 12:35

CONNIE L. SCOTTKEY  
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF HENRY COUNTY, OHIO

Kerr Buildings, Inc. ) Case No. 11-CV0001  
Plaintiff, ) NUNC PRO TUNC CHARGING ORDER  
vs. )  
Scott Bishop ) Alan J. Lehenbauer (0023941)  
Defendant, ) Attorney for Defendant Bishop  
vs. ) The McQuades Co., L.P.A.  
PO Box 237  
Swanton, OH 43558  
Phone: (419) 826-0055  
FAX: (419) 825-3871  
E-mail: mcquadelaw@embargmail.com  
Jeremy Kerr )  
Third-Party Defendant. )

This day this cause came to be heard upon Motion for a Nunc Pro Tunc Charging Order, filed by Defendant, Scott Bishop, seeking a nunc pro tunc Order charging Third-Party Defendant, Jeremy Kerr's interest in the following limited liability companies:

Beaver Creek Development Co., LLC  
13926 Defiance Pike  
Rudolph, OH 43462

Beaver Creek Properties, LLC  
13926 Defiance Pike  
Rudolph, OH 43462

(hereinafter referred to as the "Limited Liability Companies")

The Court, being duly advised in the premises, finds that said Motion is well taken.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that said Motion is hereby granted, and that Third-Party Defendant's limited

liability interests in the Limited Liability Companies are hereby charged with payment of the Defendant's judgment, the principal sum of \$79,648.00, together with interest at the statutory rate of three percent per annum from October 16, 2012, and costs of court in the amount of \$25.00.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Third-Party Defendant Jeremy Kerr, the Limited Liability Companies, their employees, agents, servants and representatives, are hereby restrained from disposing of, selling, transferring, donating, withdrawing, disbursing and/or encumbering any and all property in which an interest is held by Jeremy Kerr and/or the Limited Liability Companies, including but not limited to the following parcels in Wood County, Ohio:

- Parcel: X78-509-350307009000  
Address: 13345 Ash, Weston, OH 43569  
See Data for Parcel X78-509-350307009000 ("Exhibit 1")
- Parcel: A01-311-040000009500  
Address: 10730 Cygnet Rd., Cygnet, OH 43413  
See Data for Parcel A01-311-040000009500 ("Exhibit 2")
- Parcel: I32-410-240000021000  
Address: 13926 Defiance Pike, Rudolph, OH 43462  
See Data for Parcel I32-410-240000021000 ("Exhibit 3")
- Parcel: P60-300-330407001000  
Address: 28926 Simmons Rd., Perrysburg, OH 43551  
See Data for Parcel P60-300-330407001000 ("Exhibit 4")

and the following parcel located in Lucas County, Ohio:

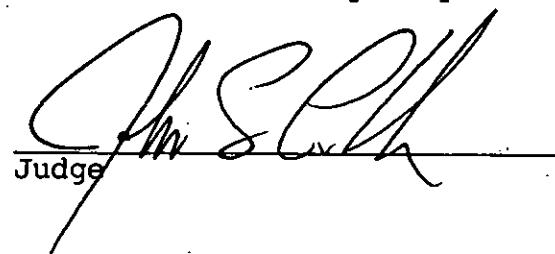
- Parcel: 05-08464 Assessor: 03-180-006  
Address: 1714 Marne Ave., Toledo, OH 43613  
Legal Description: Farmington Fourth Lot 318, TransNo. 13202842  
See Lucas County Recorder Summary and Lucas County Parcel Report (collectively "Exhibit 5")

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any and all payments, including but not limited to the distributions of cash and other property and the allocations of profits, losses, income,

gains, deductions, credits, or similar items to which Third-Party Defendant, Jeremy Kerr (assignor), would have been entitled from the Limited Liability Companies, be made instead to Defendant Bishop (assignee) in reduction of his judgment, as contemplated by R.C. §§ 1705.18(A) and 1705.19(A).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Limited Liability Companies and the members comprising the Limited Liability Companies make no payments, including but not limited to the distributions of cash and other property and the allocations of profits, losses, income, gains, deductions, credits, or similar items to which Third-Party Defendant, Jeremy Kerr (assignor), would have been entitled from the Limited Liability Companies, on account of his interests in the Limited Liability Companies until such time as Defendant Bishop (assignee)'s judgment has been satisfied of record.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Bishop serve copies of this nunc pro tunc ORDER by certified mail, return receipt requested, upon the Limited Liability Companies, by serving Third-Party Defendant, Jeremy Kerr, as well as those persons or entities whom Defendant Bishop has reason to believe may have a membership interest in the Limited Liability Companies.



Judge

FILED  
HENRY COUNTY  
COMMON PLEAS COURT

2018 APR 16 PM 1:27

CONNELL SWARTKEY  
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF HENRY COUNTY, OHIO

|                        |   |  |
|------------------------|---|--|
| Kerr Buildings, Inc.   | ) | Case No. 11-CV0001   |
| Plaintiff,             | ) | <u>AMENDED ORDERS TO RECEIVER</u>  |
| vs.                    | ) |  |
| Scott Bishop           | ) | Alan J. Lehenbauer (0023941)<br>Attorney for Defendant Bishop<br>The McQuades Co., L.P.A.                            |
| Defendant,             | ) | PO Box 237<br>Swanton, OH 43558<br>Phone: (419) 826-0055<br>FAX: (419) 825-3871<br>E-mail: mcquadelaw@embarqmail.com |
| vs.                    | ) |  |
| Jeremy Kerr            | ) |  |
| Third-Party Defendant. | ) |  |

This cause came on to be heard on Defendant Scott Bishop's motion for a nunc pro tunc charging order and this court having granted said motion and issued a nunc pro tunc charging order on January 25, 2018, and being duly advised that Jeremy Kerr ("Kerr") has interests in two limited liability companies, namely Beaver Creek Development Co., LLC and Beaver Creek Properties, LLC (hereinafter referred to as "the Limited Liability Companies"), the Court hereby amends the Order Appointing Receiver, filed on August 20, 2013, as follows:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Receiver Christopher M. Frasor ("the Receiver") shall take immediate possession, control, management, operation and charge of Kerr Buildings, Inc. The Receiver shall take immediate

possession, control and charge of Kerr's interests in the Limited Liability Companies. Pursuant to Ohio Revised Code §2735.04 and under the control of this Court, the Receiver shall have all authority and power of a receiver under Ohio law, including the following powers and duties:

a) The Receiver shall take immediate possession, control, management and charge of the accounting books and records of Kerr and Kerr Buildings, Inc., of whatever nature and wherever located, in the possession of Kerr and Kerr Buildings, Inc., or any other person or entity, including all information regarding the assets, liabilities, equity, income and expenses of Kerr and Kerr Buildings, Inc. The Receiver shall take immediate possession, control, management and charge of all of Kerr and Kerr Building, Inc.'s financial statements (whether consolidated or by individual entity), ledgers and journals, balance sheets, trial balances, statements of cash flows, income statements, statements of retained earnings, accounting journals and books of original entry, including but not limited to (1) accounts receivable agings and any other documentation which indicate the amounts owing from customers on accounts receivable and from such amounts are or were owing and when any amounts were collected and deposited, and the use, application or disposition thereof; (2) fixed asset ledgers, schedules or records documentation and/or appraisals Kerr and/or Kerr Building, Inc.'s equipment, inventory, furnishings, and supplies; (3) inventory listings or other detail; (4) all lists, schedules or records pertaining to Kerr and Kerr Building, Inc.'s stocks, bonds, shares or interests in any mutual fund, proprietorship, general or limited partnership, corporation, or limited liability company, all notes or other instruments owing to Kerr and/or Kerr Building, Inc., and information regarding any

other intangibles of Kerr and/or Kerr Building, Inc.; (5) all information and documentation which relates or pertains to any checking, saving, banking and money management accounts of any kind or nature of Kerr and/or Kerr Buildings, Inc., or into which any proceeds of the collection or sale of any asset (including accounts receivable) of Kerr and/or Kerr Buildings, Inc., have been deposited; (6) all accounts payable and receivable documentation and information and all correspondence or written documents regarding negotiations with current accounts or proposed accounts; (7) all information of whatever type or nature, regarding the payroll and benefits of the owners, management, officers and employees of Kerr and/or Kerr Buildings, Inc., including wage or salary information, expense reimbursement information, medical insurance information, or other employee deductions withheld or to be withheld, and all information regarding the trust fund or withholding taxes whether federal, state, or local and any information regarding any and all of the employer matching obligations or the employer payroll tax obligations; (8) all information and documentation of any asset transfers by Kerr and/or Kerr Buildings, Inc., in the past four years; (9) all information and documentation regarding the federal, state and local tax liabilities of Kerr and/or Kerr Buildings, Inc., including any and all federal, state and local tax returns filed or unfiled, and any documents generated during the preparation and filing of tax returns; (10) all contracts (including, without limitation, insurance policies) and leases to which Kerr and/or Kerr Buildings, Inc., are a party or have been a party; (11) all information and documentation of any other financial transaction or interest in and to any asset of Kerr and/or Kerr Buildings, Inc., including but not limited all,

information and documentation of any interests of Kerr and/or Kerr Buildings, Inc., in the Limited Liability Companies, which may be necessary or pertinent to the Receiver's operation and management of Kerr and Kerr Buildings, Inc.'s assets; and (12) any documentation that relates or pertains to Kerr and/or Kerr Building, Inc., and is kept in the ordinary course of business in connection with the record-keeping or accounting. The information described in this subparagraph shall hereinafter be referred to as the "Books and Records."

b) The Receiver shall take immediate possession, control, management and charge of all assets and property of Kerr and Kerr Buildings, Inc., of whatever nature or kind, consisting of all personal property and all real property, and all cash or cash equivalents including, but not limited to, rights, title and interest in and to all bank accounts of Kerr and/or Kerr Buildings, Inc., all interests under insurance policies and proceeds thereof, all accounts and notes receivable, all inventory of any type or nature, all furniture, fixtures, equipment, computers (hardware and software), and all general intangibles of Kerr and/or Kerr Buildings, Inc., all choses in action and causes of action, including avoidance actions for transfers of any of the assets of Kerr and/or Kerr Buildings, Inc., for less than equivalent value or other improper transfers against the transferees of those assets, all interests of Kerr and/or Kerr Buildings, Inc., in the Limited Liability Companies, and any other asset or interest owned by Kerr and/or Kerr Buildings, Inc., or in which Kerr and/or Kerr Buildings, Inc., assert an interest which has any value (collectively, "the Assets"), and the Books and Records and the Assets are hereby placed in *custodia legis* and are subject to the exclusive jurisdiction of this Court.

c) The Receiver shall have the authority to operate and manage the businesses of Kerr and Kerr Buildings, Inc., as he deems prudent in his sole and exclusive discretion throughout this litigation, subject to further order of this Court. The Receiver shall preserve and care for any and all of the Assets and utilize any and all of the Assets to preserve and maximize the value of the Assets.

d) The Receiver is authorized to collect all profits, rents, proceeds and revenues of any nature whatsoever generated from the Assets and/or the business operations of Kerr and/or Kerr Buildings, Inc. (including, without limitation, insurance proceeds), and to pay all necessary expenses relating to said operations, as he deems prudent in his sole discretion.

e) The Receiver shall have the authority to maintain or purchase insurance from any agent or carrier, of any type reasonably necessary or desirable, on all the Assets, subject to maintaining adequate coverage appropriately assigned to Scott Bishop and naming Scott Bishop as a loss payee thereof.

f) The Receiver is authorized to establish or maintain one or more bank accounts in the Receiver's name for his operations as Receiver in this matter at any federally insured bank with offices in Wood County, Ohio. The Receiver shall keep a true and accurate account of any and all receipts and disbursements which the Receiver shall receive or make as Receiver in the course of the operation of the businesses of Kerr and/or Kerr Buildings, Inc.

g) Upon request of Scott Bishop, and subject to further Court Orders, the Receiver is authorized to negotiate and effect an orderly sale, transfer, or assignment of all or a portion of any of the Assets (including collection of accounts

receivable and proceeds of available insurance) in or outside of the ordinary course of business of Kerr and/or Kerr Buildings, Inc., or of all or a portion of Kerr and/or Kerr Buildings, Inc.'s businesses as a going concern and, from the proceeds thereof, to pay the secured and unsecured indebtedness of Kerr and/or Kerr Buildings, Inc., including indebtedness which arises during the course of the Receiver's operation of the businesses of Kerr and/or Kerr Buildings, Inc., in accordance with the respective priorities of such obligations.

h) The Receiver is authorized but not required to institute, prosecute, or intervene in any lawsuit, summary proceeding or investigation against any other person(s) or entity(ies) to preserve and/or maximize the value of the Assets or to obtain possession of any of the Assets unlawfully in the possession of third parties.

i) The Receiver is authorized but not required to defend actions against Kerr and/or Kerr Buildings, Inc., and may incur expenses to defend such actions to the extent that he believes, in his sole discretion, that it will protect and preserve the Assets.

j) The Receiver is authorized but not required to perform pursuant to the terms of any existing contracts, including employment contracts, executed by Kerr and/or Kerr Buildings, Inc., in connection with the businesses of Kerr and/or Kerr Buildings, Inc., or to reject such contracts, including employment contracts, to the extent that the Receiver determines, in his sole discretion, that such performance or rejection will preserve and maximize the value of the Assets.

k) The Receiver is authorized to negotiate with any and all interested person(s) concerning the use, assignment, sale,

collection, or lease of any of the Assets.

1) The Receiver is authorized to employ any assistants, servants, agents, counsel or other persons deemed necessary or desirable to assist the Receiver in diligently executing the duties imposed upon the Receiver by this Order and Ohio law.

m) The Receiver is hereby authorized to take any and all actions, not specifically enumerated herein, which are necessary to properly and adequately manage, control, operate, maintain and protect the business operations and assets of Kerr and Kerr Buildings, Inc., during the pendency of this action.

2. Notwithstanding the foregoing, the Receiver and the Receivership estate shall not be liable for the payment of taxes, assessments or utility charges pre-dating the date of this Order. Any individual or entity receiving a copy of this Order is hereby enjoined and restrained from discontinuing service to the Receiver or the Receivership estate based upon the non-payment of such taxes or utilities prior to the date of this Order and from attempting to collect taxes and utility charges from the Receiver pre-dating the date of this Order.

3. Kerr, Kerr Buildings, Inc., the Limited Liability Companies, and any persons, firms or entities acting under the direction of Kerr and/or Kerr Buildings, Inc., and any third parties, persons, firms or entities, shall, upon presentation of a copy of this Order, identify the location of and deliver to the Receiver, any and all receivership property, both the Books and Records and the Assets, in the possession or under the control of such parties; and all persons are enjoined and restrained (a) from payment of any amounts owing to Kerr and/or Kerr Buildings, Inc., to anyone other than the Receiver and (b) from in any way

disturbing or interfering with the collection, management or sale of any of the Assets.

4. All creditors, claimants, bodies politic, parties in interest, and their respective attorneys, servants, agents, and employees, and all other persons, firms, and corporations be, and they hereby are, jointly and severally, enjoined and stayed from commencing or continuing any action at law or suit or proceeding in equity to foreclose any lien or enforce any claim against Kerr and/or Kerr Buildings, Inc., or the Books and Records or Assets, or against the Receiver in any court. The parties are further stayed from executing or issuing or causing the execution or issuance out of any Court of any writ, process, summons, attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with, or enforcing any claim or lien upon any property owned by or in the possession of Kerr, Kerr Buildings, Inc., or the Receiver, and from doing any act or thing whatsoever to interfere with the Receiver in the discharge of his duties in these proceedings or with the exclusive jurisdiction of this Court over Kerr and Kerr Buildings, Inc., the Books and Records and Assets and the said Receiver. Notwithstanding anything contained in the foregoing, Scott Bishop may foreclose his liens on the real property owned, in whole or in part, by Kerr and/or Kerr Buildings, Inc.

5. Kerr and Kerr Buildings, Inc., and their agents and employees, and any other party shall immediately turn over to the Receiver any and all Books and Records.

6. Kerr and Kerr Buildings, Inc., and their agents and employees, and any other party shall immediately turn over to the Receiver, all sums in existence on the date hereof that are related or pertain to, or derived from the Assets, including, but

not limited to (a) all cash on hand; (b) all cash equivalents and negotiable instruments (such as checks, notes, drafts or other related documents or instruments); and (c) all sums held in accounts in any financial institutions, including but not limited to, all sums of any kind relating to the use, enjoyment, possession, improvement or occupancy of all or any portion of the Assets.

7. Except as directed by the Receiver, Kerr, Kerr Buildings, Inc., the Limited Liability Companies, their affiliates, agents, officers, directors, shareholders, members, employees, representatives or creditors, and all other persons or entities, are hereby prohibited from undertaking any act for or on behalf of Kerr and/or Kerr Buildings, Inc., interfering in any way with the acts of the Receiver, and from in any way, manner or means, wasting, disposing of, transferring, selling, assigning, pledging, canceling, concealing, interfering with, or hypothecating any of the Books and Records or the Assets. Upon the request of the Receiver, the foregoing persons and entities shall cooperate and affirmatively assist the Receiver in making available to the Receiver or his agents, the Books and Records and the Assets. Nothing in this paragraph shall be construed to require a waiver of any attorney-client privilege.

8. The Receiver, and his agents, including his counsel and accountants, shall be entitled to reasonable compensation for services rendered and reimbursement for expenses (a) related to the Receiver's duties, rights, and obligations under this Order or any future orders of the Court and applicable law; (b) related to the administration, management, and protection of the Assets; or (c) related to the defense or prosecution of any claim or suit brought against the Receiver or by the Receiver against any person

or entity. Such compensation of the Receiver and his agents, his counsel and his accountants shall be reviewed by the Court and awarded from the Receivership estate.

9. The Receiver shall be compensated based upon his normal billing rate of \$150.00 per hour and the Receiver shall be reimbursed for all reasonable and necessary out of pocket costs and expenses. Travel time, if necessary, will be paid at \$100.00 per hour. With respect to seeking compensation and reimbursement of costs and expenses for the Receiver, his agents or legal counsel, the Receiver shall describe such compensation, expenses and reimbursement in applications which will be submitted to the Court for approval prior to payment.

10. The Receiver shall have full and unrestricted access to all of the Assets, and Kerr and Kerr Buildings, Inc., and their officers, directors, shareholders, employees and agents, and any other party are directed to take all steps necessary to give the Receiver access to the premises of Kerr and Kerr Buildings, Inc., and to give the Receiver all keys to the facilities of Kerr and Kerr Buildings, Inc.

11. In carrying out the duties as set forth herein, the Receiver is entitled to act in the exercise of his own sound business judgment as he deems appropriate within his sole and exclusive discretion. The Receiver shall not be liable for any action taken or not taken by him in good faith and shall not be liable for any mistake of fact or error of judgment or for any acts or omissions of an kind unless caused by the willful misconduct or gross negligence on the part of the Receiver.

12. The Receiver may, from time to time, make payments to Scott Bishop, and his successors and assigns, on the judgment in the amount of \$79,648.00 against Kerr and Kerr Buildings, Inc.,

through such acts including but not limited to, the collection of accounts receivable and insurance proceeds and sale of the real and personal property in which Scott Bishop, and his successors and assigns, have a lien interest.

13. The Receiver shall continue to serve without bond.

14. The terms of this Order shall continue in full force and effect unless and until further order of this Court.

IT IS SO ORDERED.



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DATE

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JUDGE

cc: Receiver Christopher M. Frasor  
Attorney Alan J. Lehenbauer  
Jeremy Kerr, Inmate #A686150

AFFIDAVIT PURSUANT TO OSC 2969.25  
CIVIL COMPLAINTS AND CIVIL APPEALS FILED WITHIN  
THE LAST FIVE YEARS BY JEREMY KERR

I, Jeremy Kerr, after being duly cautioned and sworn, states as follows:

1. On 9-28-15, in the Northern District of Ohio (3:15-CV-2006) Kerr v Turner, I filed a Writ of Habeas Corpus in which I claimed that my Wood County Conviction lacked sufficient evidence. The Writ was denied.
2. On 11-25-15, in the Northern District of Ohio (3:15-CV-2438) Kerr v Turner, I filed a Writ of Habeas Corpus in which I claimed that my Ottawa County Conviction lacked sufficient evidence. The Writ was denied.
3. On 5-25-17, in the Ohio Supreme Court (2017-0717) Kerr v Turner, I filed a Writ of Habeas Corpus in which I claimed that my Wood County Conviction lacked sufficient evidence. The Writ was dismissed.
4. On 9-1-17, or approximately around, in the BAP of the Sixth Circuit (2017-8031) McDermott v Kerr, I filed a Direct Appeal of the Bankruptcy Court's Decision to dismiss my Bankruptcy Petition. The case was dismissed on my motion.
5. On 10-25-17, in the Ohio Supreme Court (2017-1502) State ex rel Kerr v Reger, I filed a Writ of Mandamus to compel Judge Reger to perform a De Novo Review of my challenge to a void judgment. The Writ was dismissed.
6. On 1-22-18, in the Ohio Supreme Court (2018-0100) State ex rel Kerr v Kelsey, I filed a Writ of Mandamus to compel Judge Kelsey to conduct a De Novo Review of my challenge to a void

judgment. The Writ was dismissed.

7. On 3-20-18, in the Ohio Supreme Court (2018-0425) State ex rel Kerr v Reger, I filed a Writ of Prohibition alleging that my Wood County Conviction was void. The Writ was dismissed.

8. On 7-23-18, in the Third Appellate District (7-18-26) Kerr Buildings, Inc v Bishop v Kerr, I filed a Direct Appeal of the Henry County Court's Decision denying my Motion to Vacate Void Order Appointing Receiver. The case was dismissed.

9. On 8-30-18, in the Ohio Supreme Court (2018-1063) State ex rel Kerr v Reger, I refiled the Writ of Prohibition in paragraph 7 belieiving that I corrected the Complaint. The Writ was dismissed.

10. On 9-21-18, in the Ohio Supreme Court (2018-1329) State ex rel Kerr v Collier, I filed a Writ of Prohibition alleging that the Henry County Court's Charging Order and Order Appointng Receiver were void. The Writ was dismissed.

11. On 8-30-18, in the Third Appellate District (7-18-28) Kerr Buildings, Inc. v Bishop v Kerr, I filed a Direct Appeal of the Henry County Court's Decision denying my Motion to Vacate the void Charging Order and Order Appointing Receiver. The case was dismissed.

12. On 10-29-18, in the Ohio Supreme Court (2018-1543) State ex rel Kerr v Winter, I filed a Writ of Prohibition alleging that my Ottawa County Conviction was void. The Writ was dismissed.

13. On 1-14-19, in the Sixth Appellate District (2018-WD-0005) State ex rel Kerr v Pollex, I filed a Writ of Prohibition in which I claimed that the Wood County Court lacked subject matter

jurisdiction under ORC 2901.11(A). The Writ was dismissed.

14. On 1-28-19, in the Third Appellate District (9-19-0006) State ex rel Kerr v Turner, I filed a Writ of Habeas Corpus alleging that the Wood County Court lacked subject matter jurisdiction under ORC 2901.11(A). The Writ was dismissed.

15. On 2-28-19, in the Ohio Supreme Court (2019-0307) State ex rel Kerr v Turner, I filed a Writ of Habeas Corpus in which I claimed that my Ottawa County Conviction was wholly devoid of any evidence that could prove intent to deprive. The Writ was dismissed.

16. On 4-29-19, in the Third Appellate District (7-19-05) State ex rel Kerr v Collier, I filed a Writ of Prohibition in which I claimed that the Charging Order and Order Appointing Receiver were void because the Henry County Court violated my Rights to Procedural Due Process by granting such Orders minutes after the moving party filed it's motions. The Writ was dismissed.

17. On 5-6-19, in the Third Appellate District (7-19-06) Kerr Buildings, Inc v Bishop v Kerr, I filed a Direct Appeal of the Henry County Court's refusal to modify the Charging Orders. The case was dismissed.

18. On 5-17-19, in the Third Appellate District (9-19-30) State ex rel Kerr v Turner, I filed a Writ of Habeas Corpus in which I claimed that my Ottawa County Conviction was wholly devoid of any evidence that could prove intent to deprive. The Writ was dismissed.

19. On 6-4-19, in the Ohio Supreme Court (2019-0752) State ex rel Kerr v Pollex, I filed a Direct Appeal of the Sixth

Appellate Court's Judgment Entry dismissing the Complaint for Writ Prohibition in paragraph 13.

20. On 5-6-19, in the Ohio Supreme Court (2019-0620) State ex rel Kerr v Turner, I filed a Direct Appeal of the Third Appellate District's Judgment Entry dismissing my requested Writ of Habeas Corpus in paragraph 14. Judgment was affirmed.

21. 6-24-19, in the Sixth Appellate District (2019-WD-0047) State ex rel Kerr v Kelsey, I filed a Writ of Prohibition in which I claimed that the judgment rendered against me was void because Judge Kelsey illegally allowed the plaintiff in the case to amend me to a void Default Judgment. The Writ was dismissed.

22. On 6-28-19, in the Ohio Supreme Court (2019-0888) State ex rel Kerr v Collier, I filed a Direct Appeal of the Third Appellate District's Judgment Entry dismissing my requested Writ of Prohibition in paragraph 16. The judgment was affirmed because the Ohio Supreme Court wholly ignored the fact that Judge Collier violated my Rights to Procedural Due Process.

23. On 7-26-19, in the Ohio Supreme Court (2019-1024) State ex rel Kerr v Turner, I filed a Direct Appeal of the Third Appellate District's Judgment Entry dismissing my requested Writ of Habeas Corpus in paragraph 19. The judgment was affirmed.

24. On 8-28-19, in the Ohio Supreme Court (2019-1196) State ex rel Kerr v Kelsey, I filed a Direct Appeal of the Sixth Appellate District's Judgment Entry dismissing my requested Writ of Prohibition in paragraph 21. The case is pending.

25. On 10-7-19, in the Ohio Supreme Court (2019-1362) Kerr Buildings, Inc. Bishop v Kerr, I filed a Discretionary Appeal of the Third Appellate District;s Judgment Entery that affirmed the Henry Court's Decision. (SEE paragraph 17) The Ohio Supreme Court denied jurisdiction.

26. On 3-30-20, in the Northern District of Ohio,  
(Case no 3:20-CV-0670) Kerr v Turner, I filed a Writ of Habeas  
Corpus in I claimed that the Appellate Court's "Significant  
Amount of Work" Test is an unconstitutional test. The action is  
pending.

Further, Affiant sayeth naught.

STATE OF OHIO )  
 )  
COUNTY OF MARION ) ss

Jeremy Ken  
AFFIANT

Sworn to, before me and subscribed in my presence on this  
20 day of April, 2020.

**DONNA EVANS**  
NOTARY PUBLIC • STATE OF OHIO  
Recorded in Crawford County  
My commission expires Feb. 12, 2024

NOTARY PUBLIC

My Commission Expires: 2-12-24

**COPY**

FILED  
COURT OF APPEALS HENRY COUNTY

SEP 03 2019

KIM STOUFFER  
CLERK

**IN THE COURT OF APPEALS OF OHIO  
THIRD APPELLATE DISTRICT  
HENRY COUNTY**

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**KERR BUILDINGS, INC.,**

**PLAINTIFF-APPELLEE,**

v.

**CASE NO. 7-19-06**

**SCOTT BISHOP,**

**DEFENDANT-APPELLEE,**

v.

**JUDGMENT  
ENTRY**

**JEREMY KERR,**

**THIRD-PARTY DEFENDANT/  
APPELLANT.**

---

This appeal, having been placed on the accelerated calendar, is being considered pursuant to App.R. 11.1(E) and Loc.R. 12. This decision is, therefore, rendered by summary judgment entry, which is controlling only as between the parties to this action and not subject to publication or citation as legal authority under Rule 3 of the Ohio Supreme Court Rules for the Reporting of Decisions.

Third-party defendant-appellant, Jeremy Kerr ("Kerr"), pro se, appeals the April 15, 2019 judgment of the Henry County Court of Common Pleas denying his

JOURNAL 4 PAGE 271

JOURNALIZED DATE 9-3-19

**APPENDIX H**

motion challenging the trial court's amended charging order. For the reasons that follow, we affirm.

In 2012, the trial court dismissed with prejudice a breach-of-contract complaint filed by Kerr on behalf of Kerr Buildings, Inc. ("Kerr Buildings") against defendant-appellee, Scott Bishop ("Bishop"), and awarded judgment in favor of Bishop. Kerr did not appeal that entry; rather, he later appealed the trial court's denial of his motion to set aside the appointment of a receiver, which this court affirmed.<sup>1</sup> *Kerr Bldgs., Inc. v. Bishop*, 3d Dist. Henry No. 7-14-07, 2014-Ohio-5391, ¶ 1. The facts relevant to this appeal are as follows.

After this court determined that the trial court properly denied Kerr's motion to set aside the appointment of the receiver, Kerr filed three additional motions attacking the trial court's charging orders and orders relative to the receiver, which were denied by the trial court.<sup>2</sup> (Doc. Nos. 104, 105, 106, 113, 117, 120, 121, 122, 124, 125, 128, 129, 131, 136). (See *Kerr Bldgs., Inc. v. Bishop*, 7-18-26, Aug. 1, 2018 Accelerated JE); (*Kerr Bldgs., Inc. v. Bishop*, 7-18-28, Sept. 20, 2018 Accelerated JE).

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<sup>1</sup> This court recited much of the factual and procedural background of the case in previous appeals, and we will not duplicate those efforts here. See *Kerr Bldgs., Inc. v. Bishop*, 3d Dist. Henry No. 7-14-07, 2014-Ohio-5391; (*Kerr Bldgs., Inc. v. Bishop*, 7-18-26, Aug. 1, 2018 Accelerated JE); (*Kerr Bldgs., Inc. v. Bishop*, 7-18-28, Sept. 20, 2018 Accelerated JE).

<sup>2</sup> On January 25, 2018, the trial court amended the charging order. (Doc. No. 111). On April 16, 2018, the trial court issued an amended receiving order. (Doc. No. 118).

On March 18, 2019, Kerr filed a “motion to modify” the trial court’s amended charging order, alleging that it exceeds the scope of R.C. Chapter 1705. (Doc. No. 141). On March 27, 2019, Bishop filed a motion to dismiss Kerr’s motion, arguing that the trial court lacked jurisdiction to consider Kerr’s motion because it seeks reconsideration of a prior final and appealable order of the trial court. (Doc. No. 144). Treating Kerr’s motion as a Civ.R. 60(B) motion, the trial court dismissed Kerr’s motion on April 15, 2019. (Doc. No. 145). Kerr filed his notice of appeal on May 6, 2019 and raises four assignments of error for our review, which we address together. (Doc. No. 147).

#### **Assignment of Error No. I**

**The Trial court exceeded its authority under RC.1705.18 and RC.1705.19 [sic] when it deprived Appellant’s statutory exemption as a member of a limited liability company by (1) issuing an order that restricts Appellant from selling properties held by the limited liability company and (2) directing the Receiver to take immediate possession, control, management, operation, and charge of the limited liability companies.**

#### **Assignment of Error No. II**

**The Trial Court lacked authority under Ohio’s Void Judgment Jurisprudence to treat Appellant’s motion as a Civ.R. 60(B) motion.**

#### **Assignment of Error No. III**

**The Trial Court was absent Constitutional Authority to issue a Charging Order before [sic] it could be reasonably calculated that Appellant had an opportunity to gain knowledge of the**

proceeding, and the, an opportunity to appear and present objections.

#### **Assignment of Error No. IV**

##### **The Trial Court lacks authority under Ohio's Void Judgment Jurisprudence to cure its void orders by amending them.**

In his assignments of error, Kerr argues that the trial court erred by recasting his “motion to modify” as a Civ.R. 60(B) motion and by subsequently dismissing his motion.<sup>3</sup> Kerr contends that the trial court’s amended charging order is void because it grants authority to the receiver beyond the authority permitted under R.C. Chapter 1705.

##### *Standard of Review*

Because it raises a question of jurisdiction, we review *de novo* the denial of a motion to vacate a void judgment. *See Wells Fargo Bank NA v. Arlington*, 5th Dist. Delaware No. 13CAE030016, 2013-Ohio-4659, ¶ 19, 21. “*De novo* review is independent and without deference to the trial court’s determination.” *ISHA, Inc. v. Risser*, 3d Dist. Allen No. 1-12-47, 2013-Ohio-2149, ¶ 25, citing *Costner Consulting Co. v. U.S. Bancorp*, 195 Ohio App.3d 477, 2011-Ohio-3822, ¶ 10 (10th Dist.).

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<sup>3</sup> Notwithstanding the caption of Kerr’s motion, Kerr does not dispute that he is requesting that the trial court vacate its amended charging order. (*See* Appellant’s Brief at 11).

*Analysis*

“A court has the inherent authority to vacate its own void judgments.” *Lingo v. State*, 138 Ohio St.3d 427, 2014-Ohio-1052, ¶ 48, citing *Patton v. Diemer*, 35 Ohio St.3d 68 (1988), paragraph four of the syllabus. *See also U.S. Bank, N.A. v. Metzger*, 7th Dist. Mahoning No. 14 MA 63, 2015-Ohio-839, ¶ 14, citing *Westmoreland v. Valley Homes Mut. Hsg. Corp.*, 42 Ohio St.2d 291, 294 (1975), citing 1970 Staff Note, Civ.R. 60(B) (“Any court has inherent power to vacate a void judgment without the vacation being subject to a time limitation. \* \* \* In effect then, Civ.R. 60(B) deals with vacation of voidable judgments.”). A judgment rendered by a court lacking subject-matter or personal jurisdiction is void and issues of voidness can be raised at any time. *See Patton* at paragraph three of the syllabus; *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶ 11; *Cincinnati Bar Assn. v. Hauck*, 148 Ohio St.3d 203, 2016-Ohio-7826, ¶ 28.

“A motion for relief from a void judgment [(a motion to vacate)] is often used by a defendant who did not timely appeal the default judgment but wishes to have that judgment declared void later without resorting to the requirements of Civ.R. 60(B).” *Metzger* at ¶ 14, citing *Hayes v. A. Bonamase Contracting, Inc.*, 7th Dist. Mahoning Nos. 12MA62 and 12MA161, 2013-Ohio-5383, ¶ 17. *See also Arlington* at ¶ 20 (“A common law motion to vacate, instead of Civ.R. 60(B), is utilized to vacate a void judgment.”).

However, a court faced with a post-judgment motion can proceed to analyze the motion under Civ.R. 60 where the petitioner's voidness argument fails. *See Arlington* at ¶ 20. “““Civ.R. 60(B) motions apply only to judgments that are voidable rather than void.””” *Id.*, quoting *State ex rel. DeWine v. 9150 Group, L.P.*, 9th Dist. Summit No. 25939, 2012-Ohio-3339, ¶ 7, quoting *Beachler v. Beachler*, 10th Dist. Franklin No. CA2006-03-007, 2007-Ohio-1220, ¶ 18.

Civ.R. 60(B) provides:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken.

In order to prevail on a motion brought pursuant to Civ.R. 60(B), the movant must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2), or (3), not more than one

year after the judgment, order, or proceeding was entered or taken. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146 (1976), paragraph two of the syllabus. "These requirements are independent and in the conjunctive; thus the test is not fulfilled if any one of the requirements is not met." *Bish Constr., Inc. v. Wickham*, 3d Dist. Seneca No. 13-12-16, 2013-Ohio-421, ¶ 15, citing *Strack v. Pelton*, 70 Ohio St.3d 172, 174 (1994). "A motion for relief from judgment under Civ.R. 60(B) is addressed to the sound discretion of the trial court, and that court's ruling will not be disturbed on appeal absent a showing of abuse of discretion." *Griffey v. Rajan*, 33 Ohio St.3d 75, 77 (1987). An abuse of discretion constitutes more than an error of judgment; rather, it implies that the trial court acted unreasonably, arbitrarily, or unconscionably. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

The trial court did not err by recasting Kerr's motion as a Civ.R. 60(B) motion because the trial court's amended charging order is not void. That is, Kerr's argument that the trial court misapplied R.C. Chapter 1705 does not attack the jurisdiction of the trial court. *See Cincinnati Bar Assn.*, 2016-Ohio-7826, at ¶ 29. "Unless a judgment was issued without jurisdiction or was procured by fraud, it is considered valid, and even though it may be flawed in its resolution of the merits, its integrity is generally not subject to collateral attack in a separate judicial

proceeding.” *Id.* at ¶ 28, citing *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, ¶ 25.

Because Kerr does not allege any errors that would render the trial court’s amended charging order void, the trial court properly converted Kerr’s motion to a Civ.R. 60(B) motion and did not abuse its discretion by denying it. Kerr’s motion was not filed within the one-year time limit prescribed by Civ.R. 60(B)(1) through (4) and does not allege fraud, so the trial court’s dismissal was proper.

Further, Kerr’s argument cannot form the basis for relief under Civ.R. 60(B)(5). Kerr filed multiple post-judgment motions challenging the trial court’s orders appointing a receiver and charging orders—namely, this is the third post-judgment motion attacking the trial court’s amended charging orders and the second alleging that the trial court misapplied R.C. Chapter 1705. (See Doc. Nos. 120, 131, 141). “[R]es judicata prevents the successive filings of Civ.R. 60(B) motions [for] relief from a valid, final judgment when based upon the same facts and same grounds or based upon facts that could have been raised in the prior motion.”

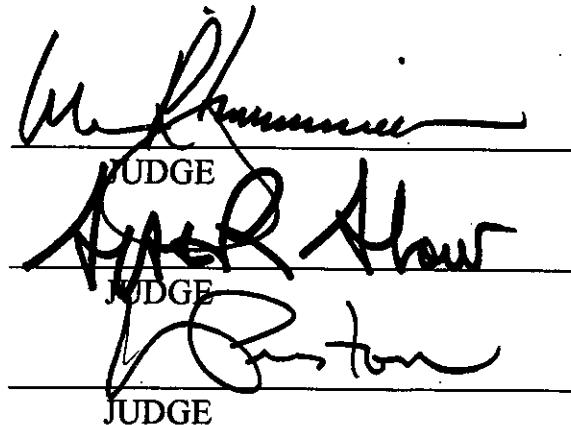
*Harris v. Anderson*, 109 Ohio St.3d 101, 2006-Ohio-1934, ¶ 8, quoting *Beck-Durell Creative Dept., Inc. v. Imaging Power, Inc.*, 10th Dist. Franklin No. 02AP-281, 2002-Ohio-5908, ¶ 16, and citing *Roberts v. Roberts*, 2d Dist. Montgomery Nos. 20432 and 20446, 2004-Ohio-5799, ¶ 25. Because Kerr’s previous post-judgment motions were based on the same grounds, the same facts, or facts that could have

been raised in his first post-judgment motion challenging the trial court's amended charging orders, Kerr's motion is barred by the doctrine of res judicata. *See id.* *See also Arlington*, 2013-Ohio-4659, at ¶ 41.

Kerr's assignments of error are overruled.

Accordingly, for the aforementioned reasons, it is the order of this Court that the Judgment Entry of the Henry County Court of Common Pleas be, and hereby is, affirmed. Costs are assessed to Appellant for which judgment is hereby rendered. This cause is remanded to the trial court for further proceedings consistent with this judgment entry and for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this judgment entry to the trial court as the mandate prescribed by App.R. 27, and serve a copy of this judgment entry on each party to the proceedings and note the date of service in the docket as prescribed by App.R. 30.



Michael J. Krumm  
JUDGE

Bryan A. How  
JUDGE

Brian C. Burton  
JUDGE

DATED: SEP 03 2019

/jlr

**COPY**

JUN 21 2019

KIM STOUFFER  
CLERK

**IN THE COURT OF APPEALS OF OHIO  
THIRD APPELLATE DISTRICT  
HENRY COUNTY**

**STATE OF OHIO EX. REL.  
JEREMY KERR,**

**CASE NO. 7-19-05**

**RELATOR,**

**v.**

**JUDGE JOHN COLLIER,**

**JUDGMENT  
ENTRY**

**RESPONDENT.**

This cause comes on for determination of Relator's complaint for writ of prohibition, Respondent's motions to dismiss the complaint, and Relator's opposition to the motion to dismiss.

The complaint alleges that Relator was a third-party defendant and Respondent was the presiding judge in a 2011 civil action. A final judgment awarding damages was rendered against Relator, a debtor's exam was held, and Respondent granted a motion for charging order against Relator's interest in a limited liability company. Thereafter, on August 20, 2013, Respondent granted a motion for appointment of a receiver.

The complaint further alleges that, on March 10, 2014, Relator filed a motion to set aside the appointment of a receiver, Respondent filed a judgment denying the motion to set aside on April 17, 2014, and Respondent's judgment was affirmed on

**APPENDIX I**

appeal. See *Kerr Bldgs., Inc. v. Bishop*, 3<sup>rd</sup> Dist. Henry No. 7-14-07, 2014-Ohio-5391. Respondent has since granted motions for a nunc pro tunc charging order and for amended orders to receiver. In the years following, Relator filed at least four unsuccessful motions to vacate the appointment of a receiver.

Relator now seeks a writ of prohibition against Respondent that vacates the “void” charging order (and nunc pro tunc charging order) and the “void” order appointing receiver (and amended order of appointment) for lack of subject matter jurisdiction and for lack of authority to grant the receiver power to continue his possession and control of the limited liability company.

A writ of prohibition is an extraordinary writ issued by a higher court to a lower court or tribunal to prevent usurpation or exercise of judicial powers or functions for which the lower court or tribunal lacks jurisdiction. *State ex rel. Winnefeld v. Butler Cty. Ct. of Common Pleas* (1953), 159 Ohio St. 225. Dismissal of a prohibition complaint is appropriate if, after presuming the truth of all factual allegations of the complaint and making all reasonable inferences in relator’s favor, it appears beyond doubt that he can prove no set of facts entitling him to the requested extraordinary writ of prohibition. *State ex rel. Hemsley v. Unruh*, 128 OhioSt.3d 307, 2011-Ohio-226.

In order to be entitled to a writ of prohibition, relator must establish that: (1) respondent is about to exercise judicial or quasi-judicial power, (2) the exercise of such power is unauthorized by law, and (3) denial of the writ will cause injury for

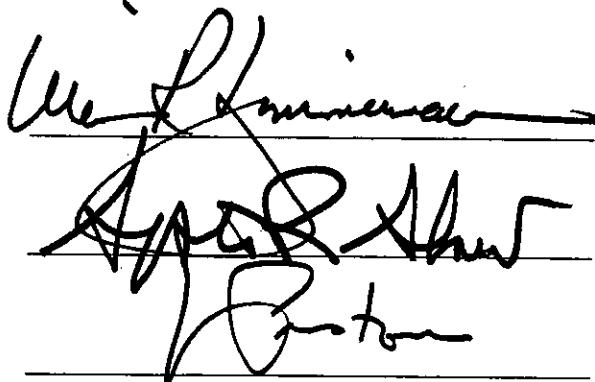
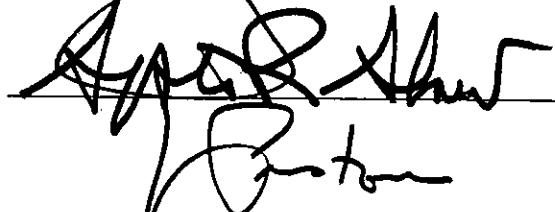
which no other adequate remedy in the ordinary course of law exists. *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 1997-Ohio-340. It is well settled that prohibition will only lie where an inferior court patently and unambiguously lacks jurisdiction over the cause. *State ex rel. Litty v. Leskoyansky*, 77 Ohio St.3d 97, 1996-Ohio-340.

Upon consideration of the complaint filed herein, the Court finds that it is apparent beyond doubt that Relator can prove no set of facts entitling him to the relief requested. First, Respondent is not “about to exercise” judicial or quasi-judicial power, as the charging order and appointment of receiver were initially issued in 2013, found not to be issued in error on appeal in 2014, and amended in 2018. Second, Respondent does not patently and unambiguously lack jurisdiction over a statutory proceeding seeking a charging order and appointment of receiver to satisfy a monetary judgment. See R.C. 1705.19 and R.C. 2735.01 *Et seq.*

Relator’s argument confuses the concept of lacking subject matter jurisdiction to issue a judgment with having subject matter jurisdiction, but issuing a judgment in error. In the latter circumstance, an adequate remedy at law exists by way of appeal. Prohibition is not a substitute for appeal to correct an allegedly erroneous result and, thus, is not available when an adequate remedy in the ordinary course of the law exists. See *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 1998-Ohio-275.

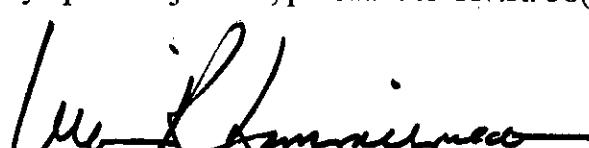
Accordingly, the complaint fails to state a claim upon which relief by writ of prohibition can be granted and the motion to dismiss is well taken.

It is therefore **ORDERED, ADJUDGED and DECREED** that the complaint for writ of prohibition be, and hereby is, dismissed at the costs of the Relator for which judgment is hereby rendered.

  
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\_\_\_\_\_  
  
\_\_\_\_\_  
JUDGES

TO THE CLERK:

Within three (3) days of entering this judgment on the journal, you are directed to serve on all parties not in default for failure to appear notice of the judgment and the date of its entry upon the journal, pursuant to Civ.R. 58(B).

  
\_\_\_\_\_  
PRESIDING ADMINISTRATIVE JUDGE  
(Signed pursuant to App. R. 15(c))

DATED: JUNE 20, 2019

/hls