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APPELLANT PRO SE:

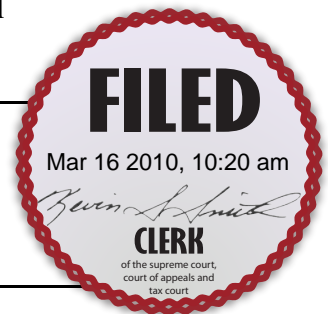
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**IN THE
COURT OF APPEALS OF INDIANA**



WALTER W. JENNINGS,
Appellant-Defendant,

VS.

PETER J. NEMETH, Judge, et al
Appellee-Plaintiff.

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No. 71A04-0910-CV-619

APPEAL FROM THE SAINT JOSEPH CIRCUIT COURT
The Honorable Michael G. Gotsch, Judge
Cause No. 71C01-0904-MI-62

March 16, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Walter W. Jennings appeals the St. Joseph Circuit Court's (the Circuit Court) order vacating a hearing on Jennings's Petition for Writ of Habeas Corpus, granting Judge Peter J. Nemeth's motion to quash the writ and motion to dismiss the action. Jennings presents the following restated issues for our review:

- I. Did the Circuit Court err in its determination that it lacked subject matter jurisdiction over Jennings's Petition for Writ of Habeas Corpus?
- II. Did the Circuit Court abuse its discretion by quashing the writ of habeas corpus?
- III. Did the Circuit Court err by finding that Jennings's Petition for Writ of Habeas Corpus was moot?
- IV. Did the Circuit Court abuse its discretion and deny Jennings due process by failing to inquire as to Jennings's competence to proceed pro se?

We affirm.

On September 5, 2007, Judge Nemeth, the St. Joseph Probate Court judge, entered a dispositional decree ordering Jennings's child to be placed in foster care after a determination that the child was a child in need of services (CHINS). Periodic review hearings were held as required by statute. *See* Ind. Code Ann. § 31-34-21-2 (West, Westlaw through 2009 1st Special Sess.). After a six-month periodic review hearing held on February 25, 2009, Judge Nemeth continued the placement of Jennings's child in foster care.

On April 29, 2009, Jennings filed a Verified Petition/Application for Writ of Habeas Corpus in the Circuit Court. In addition to naming Judge Nemeth as a respondent, Jennings named the St. Joseph County Department of Child Services and the child's foster mother as parties. Meanwhile, in a status hearing held on May 20, 2009, Judge Nemeth modified the

order for foster care, releasing the child to placement in Jennings's home on a trial basis, contingent upon Jennings signing a safety plan. Judge Nemeth subsequently released the child from foster care.

On May 27, 2009, Judge Nemeth, by counsel, appeared in the Circuit Court action and requested an enlargement of time in which to respond to Jennings's petition. The Circuit Court granted the enlargement of time giving Judge Nemeth until June 29, 2009 to file a responsive pleading. Also on May 27th, the Circuit Court issued a Writ of Habeas Corpus directing Judge Nemeth and the other named parties to appear before the Circuit Court on July 2, 2009, to show cause why the child should not be released from custody. On June 1, 2009, Judge Nemeth filed a motion to dismiss the petition, and a hearing on the motion was set for July 2, 2009.

On June 26, 2009, Judge Nemeth filed a Motion to Quash and a Motion to Tax Fees and Costs against Jennings for filing and continuing to litigate a frivolous action. On June 30, 2009, the Circuit Court entered its order, which is the subject of this appeal. On July 2, 2009, Jennings filed a Motion to Reconsider, Alter, Amend and Correct Errors, and filed a supplemental motion on August 24, 2009. On September 14, 2009, the Circuit Court made an entry that the motions were deemed denied by operation of Ind. Trial Rule 53.3. Jennings now appeals.

1.

Jennings argues that the Circuit Court erred in its determination that it lacked subject matter jurisdiction over Jennings's Petition for Writ of Habeas Corpus. The standard of

review of a trial court's ruling on a motion to dismiss for lack of subject matter jurisdiction is dependent upon whether the trial court resolved disputed facts, and if so, whether it conducted an evidentiary hearing or ruled on a paper record. *Johnson v. Patriotic Fireworks, Inc.*, 871 N.E.2d 989 (Ind. Ct. App. 2007). In the present case, there was no evidence presented and no witnesses testified. Since the trial court ruled entirely on a paper record, our review of the Circuit Court's decision to grant the motion to dismiss is reviewed *de novo*. *See Title Services, LLC v. Womacks*, 848 N.E.2d 1151 (Ind. Ct. App. 2006) (ruling on paper record on issue of subject matter jurisdiction is reviewed *de novo*).

Subject matter jurisdiction is the power of a court to hear and decide a particular class of cases. *Title Services, LLC v. Womacks*, 848 N.E.2d 1151. Whether a court has subject matter jurisdiction is resolved by determining if a claim falls within the general scope of authority conferred on a court by the Indiana Constitution or by statute. *Id.*

Pursuant to Ind. Code Ann. § 33-31-1-2 (West, Westlaw, through 2009 1st Special Sess.), the St. Joseph County Probate Court (the Probate Court) is a court of record. The Probate Court is also a court of original general jurisdiction. I.C. § 33-31-1-15 (West, Westlaw, through 2009 1st Special Sess.). Judge Nemeth, as the judge of the Probate Court has all of the powers incident to a court of record and of general jurisdiction, including the power to enforce the court's orders. *See* I.C. § 33-31-1-16 (West, Westlaw, through 2009 1st Special Sess.). The Probate Court judge has the power to issue writs of mandate and may act as a judge of the Circuit Court and the St. Joseph Superior Court. I.C. §§ 33-31-1-11; 33-31-1-18 (West, Westlaw, through 2009 1st Special Sess.).

While the Probate Court has jurisdiction that is concurrent with the jurisdiction of the Circuit Court and the St. Joseph Superior Court in probate matters, the Probate Court has exclusive juvenile jurisdiction in St. Joseph County. I.C. §§ 33-33-71-8 (West, Westlaw, through 2009 1st Special Sess.) (St. Joseph Superior Court jurisdiction); 33-28-1-2 (West, Westlaw, through 2009 1st Special Sess.) (Circuit Court jurisdiction); 33-31-1-9 (probate court exclusive juvenile jurisdiction) (West, Westlaw, through 2009 1st Special Sess.). The Probate Court has exclusive original jurisdiction in proceedings involving a child alleged to be a delinquent, a child in need of services, paternity cases, adoptions, and other cases involving juveniles. Ind. Code Ann. § 31-30-1-1 (West, Westlaw, through 2009 1st Special Sess.).

Here, Jennings sought a writ of habeas corpus in his child's CHINS action. The Probate Court had exclusive original jurisdiction over those proceedings. *See id.* The Circuit Court did not err by determining that it lacked subject matter jurisdiction over the present matter. The Circuit Court did not have jurisdiction to review a decision of another state court of coordinate, or concurrent, jurisdiction had it possessed subject matter jurisdiction. *See Traders' Loan & Inv. Co. v. Houchins*, 195 Ind. 256, 144 N.E.2d 879 (1924).

2.

Jennings claims that the Circuit Court abused its discretion by quashing the writ of habeas corpus it had previously issued. We note that the purpose of the writ of habeas corpus is to bring the person in custody before the court for inquiry into the cause of restraint. *Martin v. State*, 901 N.E.2d 645 (Ind. Ct. App. 2009). A person is entitled to habeas corpus

only if he or she is entitled to immediate release from unlawful custody. *Id.* We previously have determined that the Circuit Court did not have subject matter jurisdiction over the petition for writ of habeas corpus emanating from the CHINS proceeding. A judgment made when a court lacks subject matter jurisdiction is void. *Jernigan v. State*, 894 N.E.2d 1044 (Ind. Ct. App. 2008). Thus, any decision made by the Circuit Court would have been void. Additionally, our Supreme Court has held that a writ of habeas corpus is not a proper remedy to challenge an order of commitment within the exclusive jurisdiction of a juvenile court. *Lehman v. Montgomery*, 233 Ind. 393, 120 N.E.2d 172 (1954). The Circuit Court did not abuse its discretion by quashing the writ.

3.

Jennings next contends that the Circuit Court erred by concluding that his petition for habeas corpus was moot. Our review of the record reveals that Jennings's child was released from foster care to Jennings's custody by Judge Nemeth. A case is deemed moot and is usually subject to dismissal when a court is unable to render effective relief to a party. *In re Commitment of J.B.*, 766 N.E.2d 795 (Ind. Ct. App. 2002). As there was no basis for the relief sought by Jennings, the Circuit Court did not err in determining that the action was moot.

4.

Jennings claims that the Circuit Court abused its discretion and denied Jennings due process by failing to inquire into his competence to proceed *pro se*. We first note the general rule that *pro se* litigants are held to the same standard as attorneys admitted to the practice of

law with regard to adhering to procedural rules. *Sumbry v. Boklund*, 836 N.E.2d 430 (Ind. 2005).

Jennings appears to confuse the Sixth Amendment to the United States Constitution's guarantee to criminal defendants of the right to appointed counsel to his situation in this civil matter. Under the Sixth Amendment, defendants also have the right to proceed *pro se*. *Henson v. State*, 798 N.E.2d 540 (Ind. Ct. App. 2003). Before a defendant waives his right to counsel and proceeds *pro se*, however, the trial court must determine that the defendant's waiver of counsel is knowing, voluntary, and intelligent. *Id.* No such inquiry was required here as Jennings was not a criminal defendant.

Further, a party who knowingly decides to proceed *pro se* despite his lack of legal training cannot claim on appeal that he was prejudiced by his own lack of legal knowledge. *See Carter v. State*, 512 N.E.2d 158 (Ind. 1987) (*pro se* defendant may not claim ineffective assistance of counsel because he would be alleging himself ineffective). We find that the Circuit Court did not err by not inquiring into Jennings's competence to manage the proceedings *pro se*.

Judgment affirmed.

NAJAM, J., and BRADFORD, J., concur.