

[Cite as *State ex rel. Wells v. Costine*, 2004-Ohio-563.]

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

STATE EX REL.)	
JOHN E. WELLS, SR.,)	
)	
PETITIONER,)	CASE NO. 03 BE 51
)	
VS.)	OPINION
)	and
JUDGE J. MARK COSTINE,)	JOURNAL ENTRY
BELMONT COUNTY JUVENILE COURT,)	
)	
RESPONDENT.)	

CHARACTER OF PROCEEDINGS: Petition for Writ of Prohibition

JUDGMENT: Petition dismissed

APPEARANCES:

For Petitioner: John E. Wells, Pro Se
#344-727
P.O. Box 788
Mansfield, Ohio 44901

For Respondent: Atty. Frank Pierce
Prosecuting Attorney
Atty. Megan Banker
Assistant Prosecuting Attorney
151 West Main Street
St. Clairsville, Ohio 43950

JUDGES:

Hon. Gene Donofrio

Hon. Joseph J. Vukovich
Hon. Cheryl L. Waite

Dated: February 4, 2004

PER CURIAM.

{¶1} On August 19, 2003, Pro-se Petitioner filed a Petition for Writ of Prohibition to prevent the Respondent from conducting a permanent custody hearing involving one of his children. The hearing was scheduled for August 28, 2003.

{¶2} It may be gleaned from the petition that Petitioner is arguing that custody of the subject child should continue with his mother, rather than possibly awarding permanent custody to the Belmont County Department of Jobs and Family Services.

{¶3} On September 22, 2003, Respondent filed a motion to dismiss asserting jurisdiction to conduct a permanent custody hearing pursuant to R.C. 2151.011, R.C. 2151.23(A)(1) and R.C. 2152.19(A)(4). Furthermore, it is noted in the filing that the referenced hearing has been conducted and a decision was pending.

{¶4} This Court notes that on November 25, 2003, Petitioner in this case filed a separate Notice of Appeal directed to an order issued by Respondent in Juvenile Court Case No. 01-JA-244. That order granted permanent custody of the subject child to the Belmont County Department of Job and Family Services – Children Services Division.

{¶5} In addition, the final judgment denied the Petitioner's motion to dismiss for lack of jurisdiction as well as his motion for relief from judgment. That separate appeal assigned Case No. 03 BE 76 remains as an active appeal pending for decision by this Court.

{¶6} On October 8, 2003, Petitioner filed Memorandum Contra to Respondent's Motion to Dismiss.

{¶7} In order to obtain a writ of prohibition a petitioner must prove (1) that the court or officer against whom the writ is sought is about to exercise judicial or quasi-judicial power; (2) that the exercise of that power is unauthorized by law; and (3) that denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law. *State ex rel. White v. Junkin* (1997), 80 Ohio St.3d 335, 686 N.E.2d 267. The writ of prohibition is to be used with great caution in the furtherance of justice and only where there is no other regular, ordinary and adequate remedy. *State ex*

rel. Stark v. Summit County Court of Common Pleas (1987), 31 Ohio St.3d 324, 511 N.E.2d 115.

{¶18} In this case Petitioner is unable to demonstrate any of the necessary elements to state a good cause of action in prohibition.

{¶19} First, the Respondent is granted statutory authority to determine permanent custody issues. Under R.C. 2151.23(A)(2) the Juvenile Court is authorized “* * * to determine the custody of any child not a ward of another court of this state.” Under R.C. 2151.353(A)(4), addressing an abused, neglected or dependent child, the Juvenile Court is authorized to “(4) commit the child to the permanent custody of a public children services agency * * *.” Clearly, the Respondent court has statutory authority to conduct a permanent custody hearing.

{¶10} Moreover, Petitioner has filed a direct appeal from the judgment awarding permanent custody to the Belmont County Department of Jobs and Family Services – Children Services Division. The availability of a legal remedy providing adequate relief forecloses Petitioner from pursuing an extraordinary remedy in prohibition.

{¶11} Respondent’s motion to dismiss is granted. Petition dismissed. Costs of this action taxed against Petitioner.

{¶12} Final order. Clerk to serve notice as provided in the civil rules.

Waite, P.J., Donofrio and Vukovich JJ., concur.