[Cite as *State ex rel. Wellington v. Kobly*, 2006-Ohio-7267.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO, ex rel. RANDALL A. WELLINGTON, MAHONING COUNTY SHERIFF, RELATOR	)	CASE NO. 05-MA-228
VS.	)	OPINION
	)	AND
HON. ELIZABETH A. KOBLY, JUDGE, YOUNGSTOWN MUNICIPAL COURT, RESPONDENT.	)	JOURNAL ENTRY

CHARACTER OF PROCEEDINGS: Writ of Prohibition

JUDGMENT: Writ of Prohibition Granted
Civ.R. 19 Motion Denied

APPEARANCES:

For Relator

Paul J. Gains, Prosecutor
Gina D. Bricker,
Assistant Prosecutor
21 West Boardman Street, 6th Floor
Youngstown, Ohio 44503

For Respondent

Attorney Iris Torres Guglucello,
Law Director
26 Phelps Street
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JUDGES:

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

Dated: May 22, 2006

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PER CURIAM.

{¶1} Relator, Randall A. Wellington, Mahoning County Sheriff, has filed a Complaint for Writ of Prohibition with this Court against respondent, Hon. Elizabeth A. Kobly, Judge of the Youngstown Municipal Court.

{¶2} Relator, the Sheriff of Mahoning County, Ohio, along with the Mahoning County Commissioners, were sued in federal district court under Section 1983, Title 42, U.S.Code alleging that the Mahoning County Jail was unconstitutional due in part to overcrowding and inadequate staffing levels in *Roberts v. County of Mahoning*, 4:03 CV 2329. On March 10, 2005, the federal district court declared that conditions at the jail were unconstitutional.

{¶3} In order to bring the jail into constitutional compliance, the Mahoning County Common Pleas Court issued an order March 30, 2005, which put in place a new release mechanism for inmates based on the prioritizing of offenses.

{¶4} On November 29, 2005, respondent, a Youngstown Municipal Court judge, sentenced Ronald Tomlin (Tomlin) to seven days in the Mahoning County Jail on a conviction for domestic violence in *State v. Tomlin*, 15 CRB 2054. In a section of the journal entry of sentence captioned "Other orders," respondent specifically noted, "Sheriff not to release early." Tomlin was released from the jail that same day pursuant to the release mechanism adopted by the Mahoning County Common Pleas Court.

{¶5} The following day, on November 30, 2005, respondent ordered relator to appear and show cause why he should not be held in contempt of court for releasing Tomlin in contravention of her "do not release early" order. The hearing was scheduled for December 28, 2005, in Youngstown Municipal Court.

{¶6} On December 23, 2005, relator filed this writ along with a contemporaneous motion for an expedited alternative writ. On December 27, 2005, this Court granted the motion and ordered that respondent be restrained from conducting the December 28, 2005 contempt hearing. Since that time, respondent has filed an answer and a motion to join an indispensable party, or in the alternative, a motion to dismiss. Relator filed a brief in opposition. Both parties filed joint

stipulations on February 3, 2006. Additionally, both parties have filed motions for summary judgment. In essence, relator argues that the Mahoning County Common Pleas Court has exclusive jurisdiction over the Sheriff's operation of the jail, as manifested by implementation of the release mechanism, and that the respondent lacks jurisdiction to order relator to violate that order since that order derived from a superior tribunal. In contrast, respondent argues that it has exclusive jurisdiction to enter a sentencing order with a "do not release early" stipulation and cite relator in contempt for failing to execute that order.

STANDARD OF REVIEW

{¶7} Summary judgment is properly granted when: (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made. *Harless v. Willis Day Warehousing Co.* (1976), 54 Ohio St.2d 64, 66, 8 O.O.3d 73, 375 N.E.2d 46; Civ.R. 56(C).

{¶8} Summary judgment is appropriate when there is no genuine issue as to any material fact. A "material fact" depends on the substantive law of the claim being litigated. *Hoyt, Inc. v. Gordon & Assoc., Inc.* (1995), 104 Ohio App.3d 598, 603, 662 N.E.2d 1088, citing *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 247-248, 106 S.Ct. 2505, 91 L.Ed.2d 202.

{¶9} 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 that power is unauthorized by law, and (3) denial of the writ will cause injury for which no other remedy in the ordinary course of law exists. *State ex rel. Goldberg v. Mahoning Cty. Probate Court* (2001), 93 Ohio St.3d 160, 161-162, 753 N.E.2d 192.

{¶10} Prohibition will not lie unless it clearly appears that the court has no jurisdiction over the cause which it is attempting to adjudicate or is about to exceed its jurisdiction. *State ex rel. Ellis v. McCabe* (1941), 138 Ohio St. 417, 20 O.O. 544, 35 N.E.2d 571, paragraph three of the syllabus.

{¶11} "The writ will not issue to prevent an erroneous judgment, or to serve the purpose of appeal, or to correct mistakes of the lower court in deciding questions within its jurisdiction." *State ex rel. Sparto v. Darke Cty. Juvenile Court* (1950), 153 Ohio St. 64, 65, 41 O.O. 133, 90 N.E.2d 598.

{¶12} In her motion for summary judgment, respondent advances three main arguments. First, respondent argues that the writ should not be granted because she had exclusive jurisdiction to enter the sentencing order with a "do not release early" stipulation and to cite relator in contempt for failing to execute the order. Respondent goes to great lengths to outline the statutory scheme which details a municipal court's jurisdiction over matters in general and, with more specificity as it relates to this case, sentencing misdemeanants in her court.

{¶13} Second, respondent argues that the writ should not be granted because she did not patently and unambiguously lack jurisdiction in this matter and that relator has other remedies at law. As mentioned above, generally, in order to be entitled to a writ of prohibition, one of the elements relator must establish is that denial of the writ will cause injury for which no other remedy in the ordinary course of law exists. *Goldberg*, 93 Ohio St.3d at 161-162, 753 N.E.2d 192. However, as acknowledged by respondent, there is an exception to this requirement where the tribunal against whom the writ is sought patently and unambiguously lacks jurisdiction to exercise the power sought to be prohibited. *State ex rel. Rogers v. McGee Brown* (1997), 80 Ohio St.3d 408, 410, 686 N.E.2d 1126.

{¶14} Respondent maintains that she had jurisdiction to sentence Tomlin and has jurisdiction to hold contempt proceedings to enforce that order. As a result, respondent concludes that relator can raise the issue of her jurisdiction as a defense at any stage of the pending contempt proceedings or during any appeal of an order issued therefrom.

{¶15} Respondent's first two main arguments can readily be resolved before addressing her third main argument which goes to the larger and more relevant issue at hand here. As to her first argument, relator does not take issue with nor is there

any dispute that respondent has the requisite jurisdiction to sentence misdemeanants that come before her in her court. As to her second argument, it's understood that respondent has the power to hold persons in contempt of her orders.

{¶16} Turning to the three elements for a writ of prohibition to issue, the first requirement for the issuance of a writ of prohibition is that respondent is about to exercise judicial or quasi-judicial power. Respondent sentenced Tomlin to seven days in the county jail with a "do not release early" stipulation and to commence on November 29, 2005. Tomlin was released later that same day as a result of the Mahoning County Common Pleas Court's ordered release mechanism. On November 30, 2005, respondent attempted to exercise judicial power when she ordered relator to appear before her in Youngstown Municipal Court and show cause why he should not be held in contempt for releasing Tomlin early (i.e., prior to the expiration of his sentence). Consequently, relator has established the first requirement for the issuance of a writ of prohibition.

{¶17} The second requirement for the issuance of a writ of prohibition is that the exercise of that power is unauthorized by law. Respondent argues that the writ should not be granted because neither the Mahoning County Common Pleas Court nor relator had the authority to divest her of jurisdiction or to release prisoners sentenced in her court. Relator argues that respondent patently and unambiguously lacks jurisdiction to order him to violate a superseding order of the common pleas court made in accordance with R.C. 341.02.

{¶18} Common pleas courts are courts of general jurisdiction. *First Natl. Bank v. Smith* (1921), 102 Ohio St. 120, 130 N.E. 502, paragraph one of the syllabus; *State ex rel. Houk v. Court of Common Pleas* (1977), 50 Ohio St.2d 333, 334-335, 4 O.O.3d 475, 364 N.E.2d 277. "Municipal courts are creatures of statute and have limited jurisdiction." *State v. Cowan*, 101 Ohio St.3d 372, 805 N.E.2d 1085, 2004-Ohio-1583, at ¶11.

{¶19} R.C. 341.02 provides, in relevant part:

{¶20} "The sheriff or jail administrator shall prepare written operational

policies and procedures and prisoner rules of conduct, and maintain the records prescribed by these policies and procedures in accordance with the minimum standards for jails in Ohio promulgated by the department of rehabilitation and correction.

{¶21} "The court of common pleas shall review the jail's operational policies and procedures and prisoner rules of conduct. If the court approves the policies, procedures, and rules of conduct, they shall be adopted."

{¶22} In *State ex rel. Kohler v. Powell* (1926), 115 Ohio St. 418, 154 N.E.2d 340, cited by relator, the Ohio Supreme Court noted the common pleas court's exclusive authority to regulate control of a county jail by a sheriff. Specifically, *Kohler* dealt with control over the diet of the jail inmates. The Court examined the analogous general code provision which provided the same authority as contained in R.C. 341.02. The Court stated:

{¶23} "The foregoing provisions are in no sense ambiguous. They do not need or admit of any strained interpretation. They only need to be read, applying thereto the plain common meaning of the words employed. We have no difficulty in reaching the conclusion that the Legislature clearly and definitely intended by these provisions to commit to the court of common pleas the entire matter of promulgating rules for the government of the county jail and of the persons therein confined, including the matter of diet, to be carried out by the sheriff and his deputies and employes [sic]. The law does not sustain the claim of the sheriff that he may treat such rules made by the court as void and determine for himself all questions pertaining to the diet of prisoners. On the contrary, it is the plain duty of the sheriff to obey and enforce and to command his subordinates to obey and enforce the rules established by the court." Id., 115 Ohio St. at 422, 154 N.E.2d 340.

{¶24} In its syllabus, the Court concluded that G.C. 3162 (predecessor section to R.C. 341.02) "confers upon the common pleas court full, complete, and exclusive authority to promulgate rules and regulations for the management and control by the sheriff of the county jail and the persons confined therein[.]"

{¶25} Respondent argues that R.C. 341.02 does not give the common pleas court authority to modify her sentencing order. However, the Mahoning County Common Pleas Court order implementing the release mechanism does not modify respondent's sentencing order. The release mechanism allows relator to furlough inmates until such time as there is room in the jail for those individuals to be brought back to serve their sentences.

{¶26} Respondent also argues that R.C. 341.02 cannot be construed to give relator or the common pleas court the authority to order a release mechanism because R.C. 341.12 provides that the sheriff shall convey prisoners to other jails if there is not sufficient space.

{¶27} R.C. 341.12 provides, in part:

{¶28} "In a county not having a sufficient jail or staff, the sheriff shall convey any person charged with the commission of an offense, sentenced to imprisonment in the county jail, or in custody upon civil process, to a jail in any county which the sheriff considers most convenient and secure."

{¶29} "[A]ll statutes which relate to the same general subject matter must be read *in pari materia*. See *Maxfield v. Brooks* (1924), 110 Ohio St. 566, 144 N.E. 725; *State, ex rel. Bigelow, v. Butterfield* (1936) 132 Ohio St. 5, 6 O.O. 490, 4 N.E.2d 142. And, in reading such statutes *in pari materia*, and construing them together, this court must give such a reasonable construction as to give the proper force and effect to each and all such statutes. *Maxfield v. Brooks*, *supra*. The interpretation and application of statutes must be viewed in a manner to carry out the legislative intent of the sections. See *Benjamin v. Columbus* (1957), 104 Ohio App. 293, 4 O.O.2d 439, 148 N.E.2d 695, affirmed (1957), 167 Ohio St. 103, 4 O.O.2d 113, 146 N.E.2d 854; *In re Hesse* (1915), 93 Ohio St. 230, 112 N.E. 511. All provisions of the Revised Code bearing upon the same subject matter should be construed harmoniously. *State v. Glass* (1971), 27 Ohio App.2d 214, 56 O.O.2d 391, 273 N.E.2d 893; *State v. Hollenbacher* (1920), 101 Ohio St. 478, 129 N.E. 702. This court in the interpretation of related and co-existing statutes must harmonize and give full application to all

such statutes unless they are irreconcilable and in hopeless conflict. *Couts v. Rose* (1950), 152 Ohio St. 458, 40 O.O. 482, 90 N.E.2d 139." *Johnson's Markets, Inc. v. New Carlisle Dept. of Health* (1991), 58 Ohio St.3d 28, 35, 567 N.E.2d 1018, 1025.

{¶30} Applying these principles to the case at bar, although R.C. 341.12 would require the sheriff to convey inmates to other jails, that presupposes that there is no other common pleas court order giving him a mechanism to furlough inmates under R.C. 341.02. That also presupposes that other counties are willing and able to accept inmates from Mahoning County and that Mahoning County is willing and able to afford it. The release mechanism ordered by the common pleas court provides a logical mechanism to furlough inmates until such time as there is room for them to serve the remainder of their sentences and to bring the jail into constitutional compliance.

{¶31} Additionally, we should note that under Title 7 of the Revised Code governing municipal corporations, cities have an alternative to sending their offenders to the county jail. R.C. 753.03 provides:

{¶32} "A municipal legislative authority may, by ordinance, provide for the keeping of persons convicted and sentenced for misdemeanors, during the term of their imprisonment, at such place as the legislative authority determines, provided that the place selected is in substantial compliance with the minimum standards for jails in Ohio promulgated by the department of rehabilitation and correction. The legislative authority may enter into a contract under section 9.06 of the Revised Code for the private operation and management of any municipal correctional facility, but only if the facility is used to house only misdemeanant inmates."

{¶33} In sum, we acknowledge a municipal court's authority to sentence misdemeanants that come before it. However, the General Assembly has conferred upon common pleas courts the exclusive authority "to promulgate rules and regulations for the management and control by the sheriff of the county jail and the persons confined therein." R.C. 341.02; *State ex rel. Kohler v. Powell* (1926), 115 Ohio St. 418, 154 N.E.2d 340, syllabus. Respondent can point to no such statutory

or caselaw that gives a municipal court such specific identical authority. Therefore, under the circumstances of this case, the order of the Mahoning County Common Pleas Court takes precedence over respondent's sentencing order.

{¶34} Accordingly, this Court grants the writ of prohibition against respondent, Judge Kobly. Additionally, respondent's Civ.R. 19 motion to join indispensable parties is denied.

{¶35} Costs assessed against respondent. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ. R. 58(B).

Vukovich, J. concurs

DeGenaro, J. dissents. See dissenting opinion.

DeGenaro, J., dissenting.

{¶36} The relator has asked us to grant a writ of prohibition 1) preventing the respondent from conducting a contempt hearing and 2) prohibiting the respondent from issuing further orders like the one the relator is currently accused of violating. The majority grants both forms of relief, but I must respectfully dissent from its decision. We cannot prohibit the respondent from exercising her lawful contempt powers, even if we believe that it is unlikely that the respondent will be able to find the relator in contempt. If the relator believed the respondent did not have the authority to issue the order in question, then he should have sought a writ of prohibition before he decided not to follow that order. Furthermore, we do not have jurisdiction to prohibit the respondent from making similar orders in future cases. Accordingly, we should grant summary judgment to the respondent and deny the relator's writ of prohibition.

{¶37} In this case, the relator is accused of failing to follow one of the respondent's orders and the respondent seeks to hold the relator in contempt for this violation. A court's power to enforce its own orders is one of its most basic powers since it is necessary to the exercise of the judicial function. *State ex rel. Turner, v. Albin* (1928), 118 Ohio St. 527, paragraph one of the syllabus. A court's contempt powers allow it to punish "conduct which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions." *Windham Bank v. Tomaszczyk* (1971), 27 Ohio St.2d 55, paragraph one of the syllabus. Although a municipal court is a creature of statute, R.C. 1901.13(A)(1) gives it the authority to enforce its orders through contempt proceedings. See *State ex rel. Johnson v. County Court of Perry County* (1986), 25 Ohio St.3d 53, 54.

{¶38} Ohio courts have long recognized the collateral bar rule, which forces people to obey court orders until the court issuing the order or a reviewing court says otherwise. See *State ex rel. Beil v. Dota* (1958), 168 Ohio St. 315, 319; *Petition for Green* (1961), 172 Ohio St. 269, 274; *Natl. Equity Title Agency, Inc. v. Rivera*, 147 Ohio App.3d 246, 2001-Ohio-7095; *In re Contempt of Court of White* (1978), 60 Ohio

App.2d 62, 64-65; *Ohio Contractors Ass'n v. Local 894 of Intern. Hod Carriers', Bldg. and C. L. Union of America* (1959), 108 Ohio App. 395, 400. In other words, a person is not entitled to violate a court order because the party believes it was beyond the court's authority to issue. *Collins v. Collins* (2000), 139 Ohio App.3d 900, 908. This is especially true when the trial court seeks to hold someone in criminal contempt. *Citicasters Co. v. Stop 26 Riverbend, Inc.*, 7th Dist. No. 01 CA 99, 2002-Ohio-5197, at ¶41-53. The only exception to this rule is when the order at issue is transparently invalid or only has a frivolous pretense to validity. *Rivera* at ¶2, citing *Walker v. Birmingham* (1967), 388 U.S. 307, 315.

{¶39} In this case, the respondent's order was neither transparently invalid nor only had a frivolous pretense to validity. The respondent clearly had the authority to sentence Tomlin after he was convicted for domestic violence, a misdemeanor offense, in the respondent's court. R.C. 1901.20(A)(1); 2919.25. The respondent did not obviously lack the authority to order the Sheriff not to release Tomlin early, as discussed below. Accordingly, the relator was bound to follow the respondent's order and the respondent has the power to hold a contempt hearing if it believes the relator did not comply with its order.

{¶40} The issues the majority raises in its opinion are all defenses to a contempt action, not reasons why the trial court lacks authority to enforce its own orders. For example, the majority noted the relator's claim that Tomlin was furloughed, rather than released, and that this did not violate the order. Whether an order has been violated is one of the central issues to be resolved in any contempt proceeding. We cannot prevent the trial court from holding a contempt hearing merely because we suspect that it cannot factually find the relator in contempt.

{¶41} Likewise, the fact that the court of common pleas has issued a contradictory order does not divest the respondent of its ability to enforce its own order. Instead, this is good cause for not obeying the respondent's order which should be raised at a show cause hearing. There are no Ohio cases dealing with this issue directly but as a Kentucky court long ago explained in a case involving

similar circumstances, when two courts have issued contradictory orders, someone "should not be held in contempt in acting in disobedience to either of the courts. The error, if any, was not upon the part of the [person subject to the competing orders]." *Boone v. Riddle* (Ky.App.1905), 86 S.W. 978, 979. Thus, if the relator was acting in accordance with an order from the court of common pleas, then he should raise this as a defense within the contempt proceeding before the municipal court.

{¶42} If the relator wished to challenge the validity of the trial court's order without subjecting himself to the possibility that he might be held in contempt, then he should have sought a writ of prohibition before he chose to disobey the respondent's order. We cannot eviscerate the respondent's ability to enforce its orders in an effort to excuse the relator's delay in protecting his rights.

{¶43} Finally, we cannot grant relator's request that we prohibit the respondent from issuing any "do not release" orders in the future. A writ of prohibition only prohibits a court from proceeding where there is a case pending before that particular court and we cannot issue a writ of prohibition to prevent some future action that a court is not about to take. *Commercial Sav. Bank v. Wyandot County Court of Common Pleas* (1988), 35 Ohio St.3d 192, 194. We cannot enjoin the respondent from issuing this kind of order in the future because we do not have original jurisdiction in injunction. Id.

{¶44} As stated above, relator has asked for two forms of relief and we cannot grant either of those. We cannot prohibit the respondent from holding a contempt hearing, even if we suspect that it cannot hold the relator in contempt for various fact-based reasons, and we cannot enjoin it from entering a particular type of order in the future. If the relator believes that the respondent has issued an order which it does not have the authority to issue, then he should seek a writ of prohibition before he decides to ignore and violate the order. By seeking prohibition after he has violated the order, the relator's actions are too little, too late.

{¶45} For these reasons, we should grant respondent's motion for summary judgment. Relator is not entitled to the writ of prohibition which he seeks.