

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio, ex rel. [T.M.]

Court of Appeals No. L-09-1192

Relator

v.

Hon. Judith Fornof, Magistrate,
and the Unknown, Unidentified Visiting
Judge to be Assigned and [J.H.]
and Ann Baronas, Guardian Ad Litem

DECISION AND JUDGMENT

Respondents

Decided: October 19, 2009

* * * * *

Daniel T. Ellis, Fritz Kalmbach and Marjan Neceski, for relator.

Julia R. Bates, Lucas County Prosecuting Attorney, and
John A. Borell, Assistant Prosecuting Attorney, for respondent
Magistrate Judith Fornof.

* * * * *

OSOWIK, J.

{¶ 1} This matter is before the court on relator's complaint for writs of prohibition and mandamus, filed July 10, 2009, seeking an order prohibiting respondent, the Lucas

County Court of Common Pleas, Juvenile Division, from proceeding with case No. JC 08-177645, and an order compelling the surrender of relator's minor child, A.H., to relator.

{¶ 2} On July 23, 2009, this court issued an alternative writ, ordering respondent to file an answer to the complaint or a motion to dismiss. On August 5, 2009, respondent filed an answer to relator's complaint and request that the complaint be dismissed. On August 21, 2009, relator filed a motion for summary judgment seeking issuance of the writs of prohibition and mandamus. On September 14, 2009, respondent filed a memorandum in opposition and cross-motion for summary judgment, and on September 24, 2009, relator filed a memorandum in opposition to respondent's cross-motion for summary judgment.

{¶ 3} The facts relevant to the issues raised in relator's complaint are as follows. Relator, T.M., is the unmarried natural mother of minor child A.H., born in 2006. She asserts that the Lucas County Court of Common Pleas, Juvenile Division, is without jurisdiction over the matter of the custody of A.H. Specifically, relator asserts that respondent did not have jurisdiction on July 9, 2009, to enter an order transferring temporary custody of A.H. from relator to putative father J.H., and is without jurisdiction over any continuing child custody issues in case No. JC 08-177645. Relator asserts that the counterclaim filed by J.H. in the underlying child support action does not meet the minimal pleading requirements of Juv.R. 10(B) and (D).

{¶ 4} The complaint in this matter asks this court for a writ of prohibition enjoining respondent from exercising "or purporting to exercise" any further jurisdiction on child custody issues against relator. Further, relator seeks a writ of mandamus to compel the immediate surrender of her baby, A.H., back into relator's sole custody.

{¶ 5} The law is settled that " * * *[t]o obtain a writ of mandamus, a relator must show a clear legal right to the relief requested, that respondent has a clear legal duty to perform the requested act, and that there is no adequate remedy at law." *State ex rel. Willcox v. City of Kettering* (1984), 20 Ohio App.3d 178, 179, citing *State ex rel. Cartmell v. Dorrian* (1984), 11 Ohio St.3d 177.

{¶ 6} Relator has not shown that she has a clear legal right to have custody of A.H. immediately returned to her or that respondent has a clear legal duty to perform such requested act. Further, relator has an adequate remedy at law by way of filing an objection the magistrate's order pursuant to Juv.R. 40(D). The trial court's docket in case No. JC 08-177645 indicates that relator has in fact filed an objection to the magistrate's order and a request for a stay of that order. The matter was set for hearing in the trial court on September 9, 2009. Accordingly, relator is not entitled to a writ of mandamus.

{¶ 7} As to relator's request for a writ of prohibition, the law is clear that in order to be entitled to the requested writ, the petitioner must establish that (1) the respondent is about to exercise judicial or quasi-judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ would result in injury for which no other

adequate remedy exists in the ordinary course of law. *Tatman v. Fairfield Cty. Bd. of Elections*, 102 Ohio St.3d 425, 2004-Ohio-3701, ¶ 14.

{¶ 8} As to the first requirement, it is not disputed that issuing an order regarding the custody of a minor child involves the exercise of judicial power. As to the second requirement, a court of common pleas, as a court of general jurisdiction, has the authority to determine its own jurisdiction over both the person and the subject matter of an action. *State ex rel. Ruessman v. Flanagan* (1992), 65 Ohio St.3d 464, 466, 1992-Ohio-79. However, a writ of prohibition is appropriate where the court's lack of jurisdiction is "patent and unambiguous." *Id.* Absent such patent unambiguity, a writ of prohibition will not be granted to a party challenging a court's general jurisdiction. *State ex rel. Danzinger v. Yarbrough*, 6th Dist. No. S-06-034, 2006-Ohio-6811, ¶ 12, citing *Goldstein v. Christiansen* (1994), 70 Ohio St.3d 232, 235, 1994-Ohio-229. Pursuant to R.C. 2151.23(A), a juvenile court has original jurisdiction to determine the custody of any child not the ward of another court of this state. In the matter before us, it is not alleged that A.H. is the ward of any other court of this state.

{¶ 9} Finally, as to the third requirement in order for a writ of prohibition to issue, as we established above, relator at this time has an adequate remedy by way of filing an objection to the magistrate's order.

{¶ 10} Accordingly, based on the foregoing, relator's request for writs of prohibition and mandamus are denied. Respondent's request that the complaint be dismissed is granted. Court costs of this action are assessed to relator.

{¶ 11} To the clerk: Serve upon all parties, within three days, a copy of this decision in a manner prescribed by Civ.R.5(B).

WRIT DENIED.

Peter M. Handwork, P.J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

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