

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

Thomas A. Lucki

Court of Appeals No. OT-10-034

Petitioner [Relator]

v.

Hon. Frederick C. Hany, II

DECISION AND JUDGMENT

Respondent

Decided: November 30, 2010

* * * * *

Jack W. Bradley and Brian J. Darling, for petitioner.

* * * * *

COSME, J.

{¶ 1} Relator (petitioner), Thomas A. Lucki, has filed a "Petition for Writ of Prohibition" alleging that respondent, the Honorable Frederick C. Hany II, is exercising unauthorized jurisdiction over relator regarding the terms of his sentence issued on March 11, 2009, in Ottawa County Municipal Court case No. CRB 0801656-A. Relator claims that respondent is unauthorized to order relator to pay for a mental health evaluation/assessment and chemical dependency assessment, and follow any recommendations for treatment resulting from those assessments.

{¶ 2} For a writ of prohibition to issue, a relator must establish:

{¶ 3} "(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. Ruessman v. Flanagan* (1992), 65 Ohio St.3d 464, 465.

{¶ 4} Generally, a party challenging a court's jurisdiction possesses a remedy at law by means of a direct appeal of the court's decision. *Id.* However, a writ of prohibition is appropriate where the court's lack of jurisdiction is "patent and unambiguous." *Id.* Nevertheless, absent such patent lack of authority, a writ of prohibition will not be granted to a party challenging a court's general jurisdiction. *Goldstein v. Christiansen* (1994), 70 Ohio St.3d 232, citing *State ex rel. Bradford v. Trumbull Cty. Court* (1992), 48 Ohio St.3d 37.

{¶ 5} Municipal courts have the authority to punish contempt. R.C. 1901.13(A)(1). Contempt is defined in general terms as disobedience of a court order. "It is 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." *Denovchek v. Trumbull Cty. Bd. of Commrs.* (1988), 36 Ohio St.3d 14, 15, quoting *Windham Bank v. Tomaszczyk* (1971), 27 Ohio St.2d 55, paragraph one of the syllabus. R.C. 2705.05(A)(1) provides that for a first-time contempt, the court may sentence the contemnor up to 30 days in jail.

{¶ 6} Civil contempt sanctions are designed for remedial or coercive purposes and are often employed to compel obedience to a court order. *Id.* Criminal contempt sanctions, however, are punitive in nature and are designed to vindicate the authority of the court. *Denovchek*, *supra*, at 15. Thus, civil contempts are characterized as violations against the party for whose benefit the order was made, whereas criminal contempts are most often described as offenses against the dignity or process of the court. *State v. Kilbane* (1980), 61 Ohio St.2d 201, 204-205.

{¶ 7} Moreover, a proceeding that begins as a civil contempt action may be transformed into a criminal contempt action. See *State ex rel. Corn v. Russo* (2001), 90 Ohio St.3d 551, 555-556. In *Corn*, the Supreme Court of Ohio ruled that a court may consider the collateral issue of criminal contempt even after the underlying action is no longer pending. *Id.* at 556, citing *Cooter & Gell v. Hartmarx Corp.* (1990), 496 U.S. 384, 395-396 ("criminal contempt charge is likewise 'a separate and independent proceeding at law' that is not part of the original action. * * * A court may make an adjudication of contempt and impose a contempt sanction even after the action in which the contempt arose has been terminated.")

{¶ 8} In the present case, the Ottawa County Municipal Court notified relator of an action to show cause why he should not be held in contempt for failure to complete mental health and chemical dependency evaluations and possible treatment, conditions imposed in his original sentence in addition to the jail time and \$250 fine. Contrary to relator's suggestion, the jail sentence imposed was not a modification or imposition of

community control sanctions in addition to his original sentence. Rather, it was imposed as a result of the court's finding relator in contempt for his failure to complete all the conditions of his sentence.

{¶ 9} Therefore, the trial court had jurisdiction to hold the contempt proceeding, to find relator in contempt, and to impose a penalty against relator. Moreover, relator had an adequate remedy at law, i.e., an appeal and motion for stay of the contempt order. Thus, relator's complaint, on its face, fails to establish the elements necessary for an action in prohibition. Accordingly, relator's petition for writ of prohibition is dismissed. All other pending motions are deemed moot. Court costs of this action are assessed to relator.

{¶ 10} The clerk is directed to serve upon all parties notice of this judgment and its date of entry upon the journal.

WRIT DENIED.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

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