

RENDERED: AUGUST 24, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000228-MR

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE STEVEN D. COMBS, JUDGE
ACTION NO. 17-CI-00058

HON. KELSEY E. FRIEND, JR., in his
capacity as Pike District Judge; AND
PATRICK S. CASEY, real party in interest; AND
ANGELA R. BENTLEY, real party in interest

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON, D. LAMBERT, AND SMALLWOOD, JUDGES.

DIXON, JUDGE: The Commonwealth of Kentucky, Cabinet for Health and
Family Services, appeals an order of the Pike Circuit Court denying the Cabinet's

petition for a writ prohibiting Pike District Judge Kelsey E. Friend, Jr., from enforcing a show cause order. We affirm.

In the underlying criminal action, the real parties in interest, Patrick S. Casey and Angela R. Bentley, each pled guilty to DUI in Pike District Court. The court accepted the guilty pleas and ordered the defendants to enroll in Alcohol-Drug Education (ADE) classes. Both defendants attempted to enroll in classes at Mountain Comprehensive Care Center (MCCC), which is licensed by the Cabinet as an ADE provider. MCCC advised both defendants it could not provide the court-ordered ADE treatment because the facility's records indicated neither defendant had been convicted of DUI. Thereafter, the district court issued orders for the ADE provider to show-cause why it should not be held in contempt for failing to provide the court-ordered ADE treatment to the defendants. Three weeks before the scheduled contempt hearing, the Cabinet, as the agency responsible for regulating ADE providers, filed a petition in Pike Circuit Court for a writ prohibiting the district court from enforcing the show cause order. The Cabinet asserted the district court lacked authority to enforce the show cause order against MCCC because the court acted outside its jurisdiction by ordering the defendants to enroll in ADE treatment before they had been convicted of DUI. The Cabinet relied on KRS 189A.040(1), which states a court "shall sentence" a DUI offender to ADE treatment. The circuit court denied the petition, concluding the entry of a

guilty plea constituted a conviction for the purpose of a defendant's eligibility for ADE assessment and treatment. This appeal followed.

In *Hoskins v. Maricle*, 150 S.W.3d 1, 10 (Ky. 2004), the Kentucky Supreme Court explained:

A writ of prohibition may be granted upon a showing that (1) the lower court is proceeding or is about to proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court; or (2) that the lower court is acting or is about to act erroneously, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result if the petition is not granted.

On appeal, the Cabinet addresses only the first type of writ.¹

Essentially, the Cabinet contends the court acted contrary to statute and was therefore acting outside its jurisdiction. We disagree.

It is well-settled that, “[i]n the context of the extraordinary writs, ‘jurisdiction’ refers not to mere legal errors but to subject-matter jurisdiction, which goes to the court's core authority to even hear cases.” *Lee v. George*, 369 S.W.3d 29, 33 (Ky. 2012) (internal citations omitted). “[S]ubject matter jurisdiction does not mean ‘this case’ but ‘*this kind of case.*’” *Daugherty v. Telek*, 366 S.W.3d 463, 466 (Ky. 2012) (emphasis in original) (quoting *Harrison v. Leach*, 323 S.W.3d 702, 705-06 (Ky. 2010)). “[A] court is deprived of subject

¹ The Cabinet has not argued it was entitled to the second type of writ.

matter jurisdiction only where that court has not been given, by constitutional provision or statute, the power to do anything at all.” *Id.* at 467. “A court, once vested with subject matter jurisdiction over a case, does not suddenly lose subject matter jurisdiction by misconstruing or erroneously overlooking a statute or rule governing the litigation.” *Id.*

In the case at bar, it is undisputed the district court had subject matter jurisdiction to hear the defendants’ DUI cases and enforce orders related to those cases. *See* KRS 24A.110. Further, the court is vested with authority to utilize its contempt power to enforce a court order. *Akers v. Stephenson*, 469 S.W.2d 704, 706 (Ky. 1970). Here, the district court, acting within its subject matter jurisdiction, ordered MCCC to show-cause why it should not be held in contempt for failing to provide ADE treatment pursuant to the court’s orders in the underlying criminal cases. We conclude the district court properly exercised its subject matter jurisdiction in the DUI proceedings; consequently, the Cabinet was not entitled to a writ of prohibition.

For the reasons stated herein, we affirm the judgment of the Pike Circuit Court.

LAMBERT, D., JUDGE, CONCURS.

SMALLWOOD, JUDGE, DISSENTS AND FILES SEPARATE
OPINION.

SMALLWOOD, JUDGE, DISSENTING: While I agree with the analysis and legal conclusions set out by Judge Dixon in her opinion, for the foregoing reasons I must dissent therefrom.

A writ of prohibition is an “extraordinary remedy” that Kentucky courts “have always been cautious and conservative both in entertaining petitions for and in granting such relief.” *Bender v. Easton* 343 S.W.2d 799, 800 (Ky. 1961). The Court has divided writ cases into two categories which are distinguished by “whether the inferior court allegedly is (1) acting without jurisdiction (which includes ‘beyond its jurisdiction’), or (2) acting erroneously within its jurisdiction.” *Id.* We have also delineated a third “class” of writ cases (in essence, a subclass of the “acting erroneously” class): the so-called “certain special cases.” *Id.* at 801.

The Appellant argues that it is entitled to a writ under the first category above identified. However, as Judge Dixon’s opinion correctly concludes, the Pike District Court was acting within its jurisdiction as it had “subject matter jurisdiction to hear the defendants’ DUI cases and enforce orders related to those cases. *See*, KRS 24A.110.” Despite the Appellant’s statement, its brief also presents arguments that the Pike District Court was acting erroneously within its jurisdiction and that the Appellant would have sustained great and irreparable injury thereby or that a substantial miscarriage of justice would result

unless the Court's error was not corrected in the interest of orderly judicial administration. *See, Bender*, 343 S.W.2d 801.

The circuit court set out the correct standard to issue a Writ of Prohibition, but did not limit its consideration to only whether or not the district court was acting without jurisdiction. The court held that the term "conviction" as contained in 908 KAR 1:310(2), is not restricted to a final judgment and therefore Judge Friend was not proceeding erroneously within his jurisdiction. However, 908 KAR 1:310(2) must be interpreted and construed together with KRS 189A.404(1) which provides: "the court shall sentence the person to attend an alcohol or substance abuse education treatment program" (emphasis added). It is clear that the statute limits the court's action in ordering a person to attend an alcohol or substance abuse education treatment program to the time the "sentence" is imposed, and not prior thereto. Accordingly, I believe the trial court erred in its consideration of whether or not the district court, though acting within its jurisdiction, had acted erroneously. Therefore, I would remand the matter to the court for its determination consistent herewith.

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BRIEF FOR APPELLEE

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No Brief for Appellee
Hon. Kelsey E. Friend, Jr.

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