

[Cite as *State ex rel. Cuyahoga Cty. Dept. of Children & Family Servs. v. Sikora*, 2009-Ohio-5969.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93572

**STATE OF OHIO, EX REL.,
C.C.D.C.F.S.**

RELATOR

vs.

THE HONORABLE PETER M. SIKORA

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

WRIT OF PROCEDENDO
MOTION NO. 426040
ORDER NO. 427796

RELEASE DATE: November 10, 2009

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CHRISTINE T. MCMONAGLE, J.:

{¶ 1} On July 2, 2009, the Cuyahoga County Department of Children and Family Services (CCDCFS) filed writs of procedendo, mandamus, and prohibition against Judge Peter Sikora. In its complaint, CCDCFS asks this court to issue a writ of procedendo that orders Judge Sikora to enter a legally available order of disposition in the matter of *In re D.S.*, Cuyahoga County Juvenile Court Case No. AD06901427; to issue a writ of mandamus against Judge Sikora to determine the matter under submission without unnecessary delay; and issue a writ of prohibition that prohibits Judge Sikora from any future act in which he continues the temporary custody of abused, neglected, or dependent children beyond the

time period allowed under R.C. 2151.415(D)(4). Thereafter, on September 4, 2009, Judge Sikora, through counsel, filed a motion to dismiss that was opposed by CCDCFS. For the following reasons, we grant the motion to dismiss.

{¶ 2} The facts of this matter do not appear to be in contention. On June 21, 2006 and September 20, 2006, CCDCFS filed complaints alleging D.S. to be a neglected and dependent child and requested temporary custody of the child. On January 17, 2007, D.S. was adjudged a dependent child and CCDCFS was awarded temporary custody. On May 8, 2008, pursuant to R.C. 2151.413(D)(1), CCDCFS filed a motion to modify temporary custody to permanent custody that was heard by Judge Sikora on March 9, 2009 and March 17, 2009.

{¶ 3} R.C. 2151.413(D)(1) provides that if a child has been in the temporary custody of one or more public children agencies or private child placing agencies for 12 or more months of a consecutive 22 month period, the agency with custody shall file a motion requesting permanent custody of the child.

At the time of the filing, D.S. had been in agency custody for one year, ten months, and 18 days.

{¶ 4} On March 30, 2009, Judge Sikora found that the allegations of the motion were not proven by clear and convincing evidence and denied the motion for permanent custody, but ordered D.S. to remain in the temporary custody of CCDCFS. In returning D.S. to the temporary custody of CCDCFS, Judge Sikora

found that the child's continued residence in or return to the home would be contrary to his best interest and welfare.

{¶ 5} According to CCDCFS, when Judge Sikora held the initial hearing on March 9, 2009, D.S. had been in the temporary custody of CCDCFS for two years, eight months and 17 days. CCDCFS now requests that this court issue the requested writs since an order placing a child in the temporary custody of a children-services agency will terminate in a maximum of two years from the earlier of the date the complaint was first filed or the date that the child was first placed into shelter care and D.S. has been in temporary custody of the agency for more than two years. See R.C. 2151.415(D)(4).

{¶ 6} In order to be entitled to a writ of prohibition, relators must establish that the respondent will or is about to exercise judicial or quasi-judicial power; that the exercise of such power is unauthorized by law; and that the denial of the writ will cause injury to relator for which no other adequate remedy in the ordinary course of law exists. *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 1997-Ohio-0202, 686 N.E.2d 267; *State ex rel. Largent v. Fisher* (1989), 43 Ohio St.3d 160, 540 N.E.2d 239.

{¶ 7} With regard to the second and third elements of a prohibition action, the Ohio Supreme Court has stated that if a trial court has general subject-matter jurisdiction over a cause of action, the court has the authority to determine its own jurisdiction and an adequate remedy at law via appeal exists to challenge any

adverse decision. *State ex rel. Enyart v. O'Neill*, 71 Ohio St.3d 655, 1994-Ohio-0594, 646 N.E.2d 1110; *State ex rel. Pearson v. Moore* (1990), 48 Ohio St.3d 37, 548 N.E.2d 945.

{¶ 8} However, the Supreme Court has also recognized an exception to this general rule. “Where an inferior court patently and unambiguously lacks jurisdiction over the cause * * * prohibition will lie to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions.” *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 1995-Ohio-278, 656 N.E.2d 1288, citing *State ex rel. Lewis v. Moser*, 72 Ohio St.3d 25, 28, 1995-Ohio-148, 647 N.E.2d 155. Thus, if the lower court’s lack of jurisdiction is patent and unambiguous, the availability of an adequate remedy at law is immaterial. *State ex rel. Rogers v. McGee Brown*, 80 Ohio St.3d 408, 1997-Ohio-334, 686 N.E.2d 1126.

{¶ 9} Furthermore, prohibition does not lie unless the relator clearly demonstrates that the court has no jurisdiction of the cause or the court is about to exceed its jurisdiction. *State ex rel. Ellis v. McCabe* (1941), 138 Ohio St. 417, 35 N.E.2d 571. Finally, prohibition must be used with great caution and should not be used in doubtful cases. *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas* (1940), 137 Ohio St. 273, 28 N.E.2d 641.

{¶ 10} In this matter, we find that CCDCFs failed to meet its burden that Judge Sikora is patently and unambiguously without jurisdiction. Additionally,

this court has previously addressed a juvenile court's jurisdiction when an order of temporary custody exceeds two years.

"In *In re: Young Children* (1996), 76 Ohio St.3d 632, 637, 669 N.E.2d 1140, the Ohio Supreme Court held that the jurisdictional grant of R.C. 2151.353(E)(1) was not limited. 'It seems abundantly clear that this provision was intended to ensure that a child's welfare would always be subject to court review. That is, given that a child, by virtue of being before the court pursuant to R.C. 2151, was at risk of some harm, the General Assembly provided for the child's safety and welfare by ensuring that the juvenile court would retain jurisdiction over the child through the age of majority. R.C. 2151 places no limitation on this general jurisdiction.' *Id.*; *In re: M.Z.*, Cuyahoga App. No. 80799, 2002-Ohio-6634, at ¶¶27 and 28; See *In re: Cross*, 96 Ohio St.3d 328, 774 N.E.2d 258, 2002-Ohio-4183; *In re: E.M.*, (Nov. 8, 2001), Cuyahoga App. No. 79249. Hence, 'a judge may enter an order of disposition pursuant to §2151.415(A) after the sunset date when the problems that led to the original temporary custody order remain unresolved.' *In re: Young*, at syllabus." *In re: N.B.*, Cuyahoga App. No. 81392, 2003-Ohio-3656.

Judge Sikora's extension of temporary custody, which is an order of disposition pursuant to R.C. 2151.415(A), does not preclude his continued jurisdiction of this matter.

{¶ 11} We further find that CCDCFS possessed an adequate remedy at law. CCDCFS argues that it is without an adequate remedy at law because Judge Sikora's order that continued D.S.'s temporary custody is not a final appealable order. See *In re: Adams*, 115 Ohio St.3d 86, 2007-Ohio-4840, 873 N.E.2d 886. While we agree that the order is not a final appealable order, we nevertheless find that CCDCFS has an adequate remedy at law.

{¶ 12} In its finding that the order denying the agency's motion for permanent custody and placing the child back into the temporary custody of the agency was not a final appealable order, the Supreme Court of Ohio stated that the appellant possessed the ability to file additional motions for permanent custody and then once the court entered a final order, that order could be appealed. *Id.* at ¶46.

{¶ 13} Like the appellant in *Adams*, *supra*, CCDCFS has the ability to file subsequent motions to modify temporary custody to permanent custody. While it does not appear that CCDCFS filed any additional motions to modify temporary custody, had they filed additional motions with the same outcome, we would be less likely to find that such remedy constitutes an adequate remedy at law. However, at this point in time, we find that the filing of a subsequent motion for permanent custody constitutes an adequate remedy at law.

{¶ 14} Additionally, the availability of an adequate remedy at law also precludes this court from granting the requests for a writ of mandamus and procedendo. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108; *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.* (1990), 56 Ohio St.3d 33, 564 N.E.2d 86; *State ex rel. Provolone Pizza, LLC v. Callahan*, Cuyahoga App. No. 88626, 2006-Ohio-660; *State ex rel. Grahek v. McCafferty*, Cuyahoga App. No. 88614, 2006-Ohio-4741;

State ex rel. Utley v. Abruzzo (1985), 17 Ohio St.3d 202, 478 N.E.2d 789; *State ex rel. Hansen v. Reed* (1992), 63 Ohio St.3d 597, 589 N.E.2d 1324.

{¶ 15} Accordingly, we grant the motion to dismiss. Costs to relator. It is further ordered that the clerk shall serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

Complaint dismissed.

CHRISTINE T. MCMONAGLE, JUDGE

COLLEEN CONWAY COONEY, A.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR