

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

In re K.P.

Court of Appeals No. WD-14-014

DECISION AND JUDGMENT

Decided: March 13, 2014

* * * * *

A.P., pro se.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This matter is before the court as a petition for a writ of habeas corpus filed pro se by A.P.

{¶ 2} In his petition, A.P. alleges that his minor daughter, K.P., has been unlawfully placed in the temporary custody of a third party, her paternal aunt, by order of the Wood County Court of Common Pleas, Juvenile Division, in case No. 2013JD1127.

He asserts that this order, dated January 27, 2014, was made absent clear and convincing evidence that the child was abused, neglected or dependent, or that A.P. was an unfit father. A.P. acknowledges that he has filed an appeal from the juvenile court's order of temporary custody, but contends that the record in that case is incomplete.

{¶ 3} In case No. 2013JD1127, at an adjudicatory hearing of January 22, 2014, K.P. was found to be an unruly child. The court then continued the matter until July 2, 2014, for disposition, and entered interim orders, including that K.P. is to remain in the temporary custody of her paternal aunt and that A.P. shall have supervised visitation with K.P. A.P. asks that we issue a writ of habeas corpus and “reverse the minor child’s placement and require the trial court to produce the minor child to the custody of the petitioner, a fit parent.”

{¶ 4} R.C. 2725.01 provides that “[w]hoever is * * * entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a writ of a habeas corpus, to inquire into the cause of such * * * deprivation.” Habeas corpus, however, is an extraordinary remedy that is not available when there is an adequate remedy in the ordinary course of law. *Howard v. Catholic Social Serv. of Cuyahoga Cty., Inc.*, 70 Ohio St.3d 141, 145, 637 N.E.2d 890 (1994). Moreover, habeas corpus may not be used as a substitute for an appeal. *McNeal v. Miami Cty. Children’s Serv. Bd.*, 64 Ohio St.3d 208, 210, 594 N.E.2d 587 (1992).

{¶ 5} In *Howard*, the Supreme Court of Ohio denied habeas relief to a parent who sought relief from a juvenile court’s award of preadjudicatory emergency temporary

custody of his natural child to a children's services agency. The court determined that although the parent could not immediately appeal the temporary custody order, the absence of such a remedy did not mean that an appeal following a determination of the permanent custody complaint was not an adequate remedy at law. *Id.* at 146.

{¶ 6} Upon review of A.P.'s petition, it is clear that he is simply attacking the basis of the trial court's judgment in case No. 2013JD1127, not the court's jurisdiction to enter that judgment. *See In re Complaint for Writ of Habeas Corpus of Goeller*, 103 Ohio St.3d 427, 2004-Ohio-5579, 816 N.E.2d 594, and R.C. 2725.05.

{¶ 7} Finally, A.P. has not identified a respondent in the caption of his petition or included an address for either of the potential respondents. "As a general rule, the respondent in a habeas corpus petition is the person who holds custody and is able to physically produce the person who is allegedly being illegally restrained." *Lemley v. Kaiser*, 6 Ohio St.3d 258, 261, 452 N.E.2d 1304 (1983). Under the facts stated in the petition, K.P.'s paternal aunt would be the respondent. The petition, however, seeks an order directing the Wood County Court of Common Pleas, Juvenile Division, to produce the minor and grant custody of her to A.P., implying that the respondent is that court. Regardless, the petition is defective for failing to include the names and addresses of all the parties in the title of the action. *State ex rel. Sherrills v. State*, 91 Ohio St.3d 133, 742 N.E.2d 651 (2001); Civ.R. 10(A).

{¶ 8} Accordingly, petitioner’s application for a writ of habeas corpus is found not well-taken and denied. This cause is dismissed at petitioner’s costs.

{¶ 9} It is so ordered.

{¶ 10} To the Clerk: Manner of Service.

{¶ 11} Serve upon all parties in a manner prescribed by Civ.R. 5(B) notice of the judgment and its date of entry upon the journal.

Writ denied.

Mark L. Pietrykowski, J.

Thomas J. Osowik, J.

James D. Jensen, J.
CONCUR.

JUDGE

JUDGE

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio’s Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court’s web site at:
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