

IN THE UTAH COURT OF APPEALS

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Roger Bryner,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20090985-CA
v.)	
)	F I L E D
Judge John Baxter,)	(August 5, 2010)
)	
Defendant and Appellee.)	2010 UT App 213

Third District, Salt Lake Department, 090914644
The Honorable Deno G. Himonas

Attorneys: Roger Bryner, Midvale, Appellant Pro Se

Before Judges McHugh, Thorne, and Voros.

PER CURIAM:

Roger Bryner appeals from an order of the Third District Court that granted his petition for extraordinary relief directed to Salt Lake City Justice Court Judge John Baxter but declined to award the requested relief of dismissal of the criminal case pending in the justice court. We affirm.

Bryner filed a petition for extraordinary relief pursuant to rule 65B of the Utah Rules of Civil Procedure, seeking an order requiring Judge Baxter "to dismiss the case for unconstitutional delay." The district court ordered "that Salt Lake City Justice Court Judge John Baxter shall rule on all motions currently pending in the matter of Salt Lake City v. Roger Bryner, Case Number 07CR00340, on or before November 2nd 2009." On appeal, Bryner claims that the district court lacked jurisdiction pursuant to rule 65B to order the justice court to rule on pending motions or be held in contempt. He therefore contends that the district court erred when it required the justice court to rule on pending motions within a specified time period rather than ordering the Justice Court to dismiss the case pending in that court.

Utah Code section 78A-7-118 allows appeal of a justice court judgment through a trial de novo in district court. See Utah Code Ann. § 78A-7-118(3) (2008). Bryner claims on appeal that this statute "prohibits the [district] court from direct authority over the case before the Justice Court" and that the district court only "had jurisdiction over me through habeas corpus, and should have ordered me freed, as I remain subject to

an indefinitely delayed prosecution." Although Bryner consistently asserted that the district court could consider his petition, he now claims that the district court could not enter an order requiring action by the justice court judge. A belated attempt to recast the petition as a petition for a writ of habeas corpus is not supported by the record.

Bryner invoked the jurisdiction of the district court under rule 65B claiming that "an action under rule 65B is the appropriate legal action to challenge the failure of an inferior court to perform its duty." See generally Utah R. Civ. P. 65B(d)(2)(A) (providing that appropriate relief may be granted "where an inferior court . . . has exceeded its jurisdiction or abused its discretion"). Bryner's petition complained that the respondent judge had failed to rule on the pending motions Bryner filed and had entered an allegedly unconstitutional scheduling order limiting both parties to filing one motion at a time and precluding the filing of a new motion until a previously filed motion had been resolved. The district court ordered the justice court to rule upon all pending motions by November 2, 2009.

The district court's inquiry was confined to determining whether Bryner was entitled to relief under rule 65B(d)(2)(B) for an alleged failure by Judge Baxter to perform his judicial duties. Rule 65B(d) defines the scope of review when an appellate court "is confronted with a petition for extraordinary writ challenging a lower court's action or inaction, stating that '[w]here the challenged proceedings are judicial in nature, the court's review shall not extend further than to determine whether the respondent has regularly pursued its authority.'" State v. Barrett, 2005 UT 88, ¶ 9, 127 P.3d 682 (quoting Utah R. Civ. P. 65B(d)). "Unlike a party filing a direct appeal, a petitioner seeking rule 65B(d) extraordinary relief has no right to receive a remedy that corrects a lower court's mishandling of a particular case. Rather, whether relief is ultimately granted is left to the sound discretion of the court hearing the petition." Id. ¶ 23. The district court's ruling requiring Judge Baxter to rule on pending motions but declining to rule on the merits of the pending motions was not an abuse of discretion and was consistent with the scope of review under rule 65B(d).

We affirm.

Carolyn B. McHugh,
Associate Presiding Judge

William A. Thorne Jr., Judge

J. Frederic Voros Jr., Judge