

[Cite as *State ex rel. Harper v. Moore*, 2018-Ohio-967.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106190

**STATE OF OHIO, EX REL.
ANTONIO HARPER**

RELATOR

vs.

**THE HONORABLE JUDGE LAUREN C. MOORE,
ET AL.**

RESPONDENTS

JUDGMENT:
COMPLAINT DISMISSED

Writ of Prohibition
Motion Nos. 512631 and 513484
Order No. 515114

RELEASE DATE: March 14, 2018

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PATRICIA ANN BLACKMON, J.:

{¶1} Relator Antonio Harper commenced this action for a writ of prohibition, asking this court to forbid respondents Cleveland Municipal Court Judge Lauren Moore and the Cleveland Municipal Court from ordering his continued detention under R.C. 2945.38(H)(4). Harper contends that a writ lies on two grounds: (1) Judge Moore was clearly and unambiguously required by statute to discharge him and failed to do so; and (2) Judge Moore lacked the authority to order Northcoast Behavioral Healthcare to file an affidavit seeking involuntary civil commitment in Cuyahoga County Probate Court. But because we find that Harper had an adequate remedy at law and that Judge Moore and the Cleveland Municipal Court did not patently and unambiguously lack jurisdiction, we grant respondents' motion for judgment on the pleadings and dismiss the complaint.

A. Procedural History and Facts

{¶2} Harper was charged with the following misdemeanor offenses in Cleveland Municipal Court: 2016 CRB 022078, 2017 CRB 010707, 2017 CRB 007345, 2017 CRB 005743, 2016 TRD 025583, and 2016 CRB 024004. On June 16, 2017, Judge Moore issued a judgment entry finding Harper to be incompetent to stand trial and ordered him to the Northcoast Behavioral Healthcare for treatment and restoration to competency. In an order journalized on August 25, 2017, Judge Moore found Harper to be incompetent to stand trial and that he “would benefit from further psychiatric treatment and is suitable for civil commitment.” As a result of these findings, Judge Moore ordered the following:

An affidavit shall be filed in Probate Court for civil commitment in accordance with O.R.C. Section 5122.01 by Northcoast Behavioral Healthcare Staff.

The defendant shall be detained at Northcoast Behavioral Healthcare Center until the probable cause or initial hearing can be held in Probate Court pursuant to O.R.C. 2945.38(H)(4), said detention not to exceed ten (10) days.

{¶3} On August 30, 2017, Harper filed a complaint for a writ of prohibition in this court, alleging that Judge Moore lacked the statutory authority and jurisdiction to order his continued detention under R.C. 2945.38(H)(4) and that Judge Moore lacked the statutory authority to order Northcoast Behavioral to file an affidavit recommending involuntary civil commitment in the probate court. The complaint further acknowledged that an affidavit in probate court was filed on August 25, 2017, and a hearing was scheduled for September 5, 2017. In his complaint, Harper sought relief in way of a writ of prohibition forbidding the respondents from ordering his detention under R.C. 2945.38(H)(4), which provides in relevant part as follows:

If the court finds that the defendant is incompetent to stand trial, if the most serious offense with which the defendant is charged is a misdemeanor or a felony other than a felony listed in division (C)(1) of this section, and if the court finds that there is not a substantial probability that the defendant will become competent to stand trial even if the defendant is provided with a course of treatment, or if the maximum time for treatment relative to that offense as specified in division (C) of this section has expired, the court shall dismiss the indictment, information, or complaint against the defendant. A dismissal under this division is not a bar to further prosecution based on the same conduct. The court shall discharge the defendant unless the court or prosecutor files an affidavit in probate court for civil commitment pursuant to Chapter 5122. or 5123. of the Revised Code. If an affidavit for civil commitment is filed, the court may detain the defendant for ten days pending civil commitment.

{¶4} The complaint also alleged a “writ of prohibition is necessary, as there is not adequate remedy at law.”

{¶5} In October 2017, this court issued an order, requiring Harper to show cause that the complaint should not be dismissed on mootness grounds or on the basis that an adequate remedy of law exists precluding a writ of prohibition. Harper submitted a response, arguing that, despite no longer being detained, the matter is capable of repetition, yet evades review because of the short detainment period and the likelihood of this happening again, and therefore the matter was not moot. Harper further argued that the judgment entry journalized on August 25, 2017, was not a final appealable order because the municipal cases against him were dismissed without prejudice.

{¶6} Respondents subsequently moved for judgment on the pleadings, raising several arguments, including that the matter was no longer ripe for review, Judge Moore properly exercised her authority, and that “there are no facts to support an extraordinary writ of prohibition.” Harper opposed the motion and separately moved for judgment on the pleadings, which was opposed by respondents.

B. Law and Analysis

{¶7} Determination of a motion for judgment on the pleadings is restricted solely to the allegations in the pleadings and any writings attached to the complaint. *Peterson v. Teodosio*, 34 Ohio St.2d 161, 165, 297 N.E.2d 113 (1973). A Civ.R. 12(C) motion for judgment on the pleadings presents only questions of law. *Whaley v. Franklin Cty. Bd. of Commrs.*, 92 Ohio St.3d 574, 581, 2001-Ohio-1287, 752 N.E.2d 267. Dismissal is

appropriate under Civ.R. 12(C) when, after construing all material allegations in the complaint, along with all reasonable inferences drawn therefrom in favor of the nonmoving party, the court finds that the plaintiff can prove no set of facts in support of its claim that would entitle it to relief. *State ex rel. Midwest Pride IV, Inc. v. Pontius*, 75 Ohio St.3d 565, 570, 1996-Ohio-459, 664 N.E.2d 931.

{¶8} “There are three elements necessary for a writ of prohibition to issue: the actual or imminent exercise of judicial power, the lack of authority for the exercise of that power, and the lack of an adequate remedy in the ordinary course of law.” *State ex rel. McGirr v. Winkler*, Slip Opinion No. 2017-Ohio-8046, ¶ 13, citing *State ex rel. Elder v. Camplese*, 144 Ohio St.3d 89, 2015-Ohio-3628, 40 N.E.3d 1138, ¶ 13. In addition, prohibition does not lie if relator has or had an adequate remedy in the ordinary course of the law, even if the remedy was not employed. *State ex rel. Leshner v. Kainrad*, 65 Ohio St.2d 68, 417 N.E.2d 1382 (1981).

{¶9} However, if the absence of jurisdiction is patent and unambiguous, then the petitioner need not establish the lack of an adequate remedy at law. *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 15. But “[a]bsent a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging the court’s jurisdiction has an adequate remedy at law by appeal.” *State ex rel. Enyart v. O’Neill*, 71 Ohio St.3d 655, 656, 1995-Ohio-145, 646 N.E.2d 1110.

{¶10} Here, even assuming that Harper’s petition is not moot, we find that his complaint for prohibition must be dismissed. Under R.C. 1901.20(A), a municipal court “has jurisdiction over misdemeanors occurring within its territorial jurisdiction.” *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E.2d 1025, ¶ 11; *see also State ex rel. Jones v. Garfield Hts. Mun. Court*, 77 Ohio St.3d 447, 448, 674 N.E.2d 1381 (1997). There is no allegation that the municipal court did not have jurisdiction over Harper’s cases filed in municipal court. Further, the complaint does not establish that Judge Moore or the other respondents patently and unambiguously lacked jurisdiction over Harper’s criminal case. Instead, the thrust of the allegations of the complaint is that Judge Moore wrongly applied R.C. 2945.38(H)(4). Specifically, Harper argues that the trial court was required to discharge him because the affidavit to commence civil commitment had not already been filed at the time of the hearing and the statute did not authorize the ordering of the Northcoast Behavioral Healthcare staff to file an affidavit. But these arguments should have been raised in a direct appeal. *See State ex rel. Sparto v. Juvenile Court of Darke Cty.*, 153 Ohio St. 64, 65, 90 N.E.2d 598 (1950) (recognizing that prohibition “will not issue to prevent an erroneous judgment, or to serve the purpose of appeal, or to correct mistakes of the lower court in deciding questions within its jurisdiction”).

{¶11} Harper contends that he had no adequate remedy at law and could not appeal the order because his case had been dismissed without prejudice. But none of the pleadings establish this fact. The order attached to Harper’s complaint for writ of

prohibition does not indicate that the case had been dismissed without prejudice. Nor did Harper allege that the trial court exercised jurisdiction after dismissing his cases. To the extent that the trial court subsequently dismissed the cases without prejudice, this does not alter the fact that Harper could have directly appealed the order. *See generally State v. Muncie*, 91 Ohio St.3d 440, 746 N.E.2d 1092 (2001) (a trial court's order that requires an incompetent defendant to be forcibly medicated in an effort to restore the defendant to competency is final and appealable); *State v. Upshaw*, 110 Ohio St.3d 189, 2006-Ohio-4253, 852 N.E.2d 711 (an order finding a criminal defendant incompetent to stand trial and committing the defendant to an institution for the restoration of mental competency is a final, appealable order under R.C. 2505.02(B)(4)). Harper's failure to exercise that right does not provide sufficient grounds for this court to grant an extraordinary writ of prohibition.

{¶12} Accordingly, because we find that prohibition does not lie in this case, we grant respondents' motion for judgment on the pleadings and deny Harper's motion for judgment on the pleadings. Costs to Harper. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶13} Complaint dismissed.

PATRICIA ANN BLACKMON, JUDGE

EILEEN T. GALLAGHER, P.J., and

LARRY A. JONES, SR., J., CONCUR