

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, EX REL.
GREGORY WALKER,

:

Relator,

:

No. 108890

v.

:

JUDGE MICHAEL J. RYAN,

:

Respondent.

:

JOURNAL ENTRY AND OPINION

JUDGMENT: COMPLAINT DENIED

DATED: October 29, 2019

Writs of Prohibition and Mandamus
Motion No. 532305
Order No. 532588

Appearances:

Gregory Walker, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and James E. Moss, Assistant Prosecuting
Attorney, *for respondent*.

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Gregory Walker has filed a complaint through which he seeks a writ of prohibition and a writ of mandamus. Walker, through his complaint for a writ of prohibition, argues that Judge Michael J. Ryan does not possess statutory

jurisdiction to preside over the juvenile proceedings initiated in *In re: M.H.*, Cuyahoga C.P., Juvenile Division No. DL19104786. In addition, Walker seeks a writ of mandamus to compel Judge Ryan to transfer Walker from prison in order to be present at all proceedings in DL19104786, compel Judge Ryan to appoint legal counsel to represent Walker during all juvenile proceedings in DL19104786, and compel Judge Ryan to allow Walker to provide counsel to his daughter, M.H., during all juvenile proceedings in DL19104786. Judge Ryan has filed a Civ.R. 56(C) motion for summary judgment that is granted for the following reasons.

I. FACTS

{¶ 2} In April 2019, Walker's daughter was charged by complaint in the Cuyahoga C.P. Juvenile Court with one count of domestic violence, a violation of R.C. 2919.25(A), and one count of domestic violence, a violation of R.C. 2919.25(C). On April 23, 2019, a hearing was conducted before a magistrate wherein M.H. was appointed a public defender and a guardian ad litem. M.H. denied the allegations of the complaint.

{¶ 3} On June 7, 2019, Walker filed an "omnibus motion for relief" through which he requested conveyance from the Warren Correctional Institution to the Cuyahoga County Juvenile Court in order to attend M.H.'s trial and to also counsel M.H. during the course of her trial.¹ In addition, Walker sought the appointment of

¹Walker is serving a sentence of 15 years to life as a result of his conviction for the offenses of murder with firearm specifications and having weapons while under disability.

legal counsel when attending any juvenile proceedings held with regard to his daughter. On June 13, 2019, a magistrate of the Cuyahoga County Juvenile Court denied Walker's "omnibus motion for relief."

{¶ 4} On August 13, 2019, Walker filed his complaint for a writ of prohibition and a writ of mandamus. On August 28, 2019, Walker's daughter withdrew her former plea of denial and admitted the allegations of the complaint for two counts of domestic violence. A dispositional hearing was scheduled for October 29, 2019. On September 4, 2019, Judge Ryan filed a motion for summary judgment that is granted for the following reasons.

II. LEGAL ANALYSIS

A. Complaint for Writ of Prohibition

{¶ 5} Walker, through his complaint for a writ of prohibition, argues that Judge Ryan does not possess the necessary jurisdiction to proceed to an adjudication with regard to his daughter's pending juvenile action. In order for this court to issue a writ of prohibition, Walker must establish that: 1) Judge Ryan is about to exercise judicial or quasi-judicial power; 2) the exercise of judicial power by Judge Ryan is unauthorized by law; and 3) there exists no remedy in the ordinary course of the law. *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 1997-Ohio-340, 686 N.E.2d 267; *State ex rel. Estate of Nichols v. Russo*, 8th Dist. Cuyahoga No. 107508, 2018-Ohio-3416.

{¶ 6} In the absence of a patent and unambiguous lack of jurisdiction, a court exercising general subject-matter jurisdiction can determine its own

jurisdiction and any party contesting the jurisdiction of a court possesses an adequate remedy through an appeal. *State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302. To constitute an adequate remedy, the remedy must be “complete, beneficial, and speedy.” *State ex rel. Ullmann v. Hayes*, 103 Ohio St.3d 405, 2004-Ohio-5469, 816 N.E.2d 245, ¶ 8. “[C]ontentions that appeal from any subsequent adverse final judgment would be inadequate due to time and expense are without merit.” *State ex rel. Lyons v. Zaleski*, 75 Ohio St.3d 623, 626, 665 N.E.2d 212 (1996), citing *Whitehall ex rel. Wolfe v. Ohio Civ. Rights Comm.*, 74 Ohio St.3d 120, 124, 656 N.E.2d 684 (1995); *State ex rel. Gillivan v. Ohio Bd. of Tax Appeals*, 70 Ohio St.3d 196, 638 N.E.2d 74 (1994).

{¶ 7} Herein, Judge Ryan and the Cuyahoga County Juvenile Court possess the basic statutory jurisdiction, pursuant to R.C. 2151.23(A)(1), to preside over and adjudicate the claims of delinquency brought against Walker’s daughter in DL-19104786. *State ex rel. N.A. v. Cross*, 125 Ohio St.3d 6, 2010-Ohio-1471, 925 N.E.2d 614. In addition, Walker possesses an adequate remedy at law through a direct appeal, once Judge Ryan has adjudicated the pending juvenile proceeding. *State ex rel. Willacy v. Smith*, 78 Ohio St.3d 47, 676 N.E.2d 109 (1997). Walker has failed to establish that he is entitled to a writ of prohibition.

B. Complaint for Writ of Mandamus

{¶ 8} Walker, through his complaint for a writ of mandamus, seeks an order from this court that requires Judge Ryan to convey Walker from prison so that he can attend his daughter’s trial and adjudication proceedings and “counsel his

child, cross-examine witnesses, and move to withdraw M.H.'s guilty plea." In addition, upon conveyance from prison, Walker seeks the appointment of legal counsel on his behalf while attending his daughter's trial and adjudication proceedings.

{¶ 9} In order to obtain a writ of mandamus, Walker must establish that: 1) he possesses a clear legal right to the requested relief; 2) Judge Ryan possesses a clear legal duty to provide the requested relief; and 3) there exists no other adequate remedy in the ordinary course of the law. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987); *State ex rel. Middletown Bd. of Edn. v. Butler Cty. Budget Comm.*, 31 Ohio St.3d 251, 510 N.E.2d 383 (1987), citing *State ex rel. Westchester v. Bacon*, 61 Ohio St.2d 42, 399 N.E.2d 81 (1980). It is also well-established that when a court has discretion to act, its only duty is to exercise that discretion. *State ex rel. Butler v. Demis*, 66 Ohio St.2d 123, 420 N.E.2d 116 (1981). Although a writ of mandamus may require an inferior tribunal to exercise its judgment or to proceed to the discharge of its function, this court may not issue a writ of mandamus to control judicial discretion, even if such discretion is grossly abused. R.C. 2731.03; *State ex rel. Sawyer v. O'Connor*, 54 Ohio St.2d 380, 377 N.E.2d 494 (1978).

{¶ 10} Initially, we find that Judge Ryan possesses no duty to convey Walker from prison in order for Walker to attend his daughter's trial and adjudication proceedings. Generally, prisoners have no constitutional right to be personally present at any stage of judicial proceedings that do not directly involve the basis of

incarceration. Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying the penal system. *Wolff v. McDonald*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974), citing *Price v. Johnson*, 334 U.S. 266, 68 S.Ct. 1049, 92 L.Ed. 1356 (1947); *Mancino v. Lakewood*, 36 Ohio App.3d 219, 523 N.E.2d 332 (8th Dist.1987).

{¶ 11} In addition, a trial court's ruling on the request of an incarcerated person to appear at a legal proceeding, by requiring authorities to transport him to trial, rests within the sound discretion of the trial court. *State ex rel. Maxwell v. Trikilis*, 9th Dist. Medina No. 06CA0071-M, 2007-Ohio-1355; *Jones v. Bowens*, 11th Dist. Ashtabula No. 2002-A-0034, 2003-Ohio-5224. This court, through a writ of mandamus, cannot control judicial discretion, even if the trial court's discretion is abused. *State ex rel. Tech. Constr. Specialties, Inc. v. De Weese*, 155 Ohio St.3d 484, 2018-Ohio-5082, 122 N.E.3d 164; *State ex rel. Mason v. Griffin*, 90 Ohio St.3d 299, 737 N.E.2d 958 (2000). Abuse of discretion can be addressed through a direct appeal, which provides Walker with an adequate remedy in the ordinary course of the law and prevents this court from issuing a writ of mandamus with regard to the issue of Walker's appearance at his daughter's trial and adjudication hearing. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987); *State ex rel. Vanderlaan v. Pollex*, 96 Ohio App.3d 235, 644 N.E.2d 1073 (6th Dist.1994).

{¶ 12} Walker's second claim for mandamus, that he is entitled to representation by appointed counsel while attending his daughter's trial, is moot

based upon our holding that he is not entitled to be conveyed to the Cuyahoga County Juvenile Court. To issue a writ of mandamus, with regard to Walker's claim of entitlement to legal representation, would constitute a vain act. *State ex rel. Bona v. Orange*, 85 Ohio St.3d 18, 22, 1999-Ohio-431, 706 N.E.2d 771, citing *State ex rel. Thomas v. Ghee*, 81 Ohio St.3d 191, 192, 1998-Ohio-461, 690 N.E.2d 6.

{¶ 13} Assuming that there exists a clear legal right to appointed counsel, mandamus would still not lie because Walker possessed an adequate remedy in the ordinary course of the law. Walker could have appealed the order of June 13, 2019, that denied the “omnibus motion for relief.” In *State ex rel. Johnson v. Baronzzi*, 7th Dist. Columbiana No. 06-CO-33, 2006-Ohio-4955, it was established that because proceedings in a juvenile court are special statutory proceedings, the denial of the right to appointed counsel involves a substantial right that creates a final appealable order under R.C. 2505.02(A)(2), 2505.02(B)(2), and 2505.02(B)(4)(b). The court in *Johnson* further held that filing an immediate appeal from the denial of a request for representation by counsel, in a juvenile proceeding, would constitute an adequate remedy at law.

C. Right to Counsel Child in a Juvenile Proceeding

{¶ 14} Finally, it is readily apparent that Walker misunderstands the right to counsel his child in a delinquency proceeding. The Supreme Court of Ohio, in *In re: C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, has firmly established that a juvenile possesses a constitutional right to legal representation, not legal representation by a parent, custodian, or guardian. The Supreme Court of Ohio

further held that the common law does not permit a parent to appear pro se on behalf of a minor child in a delinquency case.

Moreover, * * *, the Ohio legislature was well aware that this court has the exclusive authority to regulate, control, and define the practice of law, including prohibitions on lay representation, *see In re Unauthorized Practice of Law in Cuyahoga Cty.* (1963), 175 Ohio St. 149, 151, 23 O.O.2d 445, 192 N.E.2d 54, that we had held that “no one, other than an attorney, may appear in court as a representative of another, whether or not such representative is to receive a fee for his services,” *id.*, and that we had defined the practice of law as including representation before a court, as well as other tasks, including “all advice to clients and all actions taken for them in matters connected with the law,” *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 1 O.O. 313, 193 N.E. 650, at paragraph one of the syllabus. We did not then, and we do not now, countenance a parent who is not an attorney representing a child in court in the capacity of counsel.

Indeed, “[i]t has long been recognized that the right to counsel is the right to the effective assistance of counsel.” *McMann v. Richardson* (1970), 397 U.S. 759, 771, 90 S.Ct. 1441, 25 L.Ed.2d 763, fn. 4. Most parents are not attorneys and will not be able to provide effective counsel because they are not trained in the law. *See Gault, supra; Johnson v. Zerbst* (1938), 304 U.S. 458, 462-463, 58 S.Ct. 1019, 82 L.Ed. 1461; *Powell v. Alabama* (1932), 287 U.S. 45, 68-69, 53 S.Ct. 55, 77 L.Ed. 158; *In re Manuel R.* (1988), 207 Conn. 725, 739, 543 A.2d 719. Because even the best-intentioned parents will lack the skill and familiarity with law and procedure to adequately represent their children in delinquency proceedings, they may not do so.

In re: C.S., supra, at ¶ 92.

{¶ 15} Thus, Walker possesses no right to represent his child in any legal capacity.

III. CONCLUSION

{¶ 16} Walker has failed to establish that Judge Ryan is about to exercise judicial authority that is not authorized by law. In addition, Walker has failed to

establish that he possesses a clear legal right to be conveyed from prison and appointed legal counsel in order to participate in his daughter's juvenile court proceedings. Accordingly, we grant Judge Ryan's motion for summary judgment. Costs to Walker. 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).

{¶ 17} Complaint denied.

FRANK D. CELEBREZZE, JR., JUDGE

MARY EILEEN KILBANE, A.J., and
EILEEN A. GALLAGHER, J., CONCUR