

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO, ex rel., D.H.

Relator

v.

JUDGES OF THE MONTGOMERY COUNTY COURT OF COMMON PLEAS, GENERAL
DIVISION:

THE HONORABLE BARBARA P. GORMAN, PRESIDING JUDGE, et al.

Appellate Case No. 27067

[Original Action in Prohibition]

DECISION AND FINAL JUDGMENT ENTRY

July 28, 2016

PER CURIAM:

{¶ 1} D.H. filed this prohibition action on March 31, 2016. He asked this court to prohibit Respondents, eleven judges of the General Division of the Montgomery County Court of Common Pleas, from exercising jurisdiction over him in an anticipated criminal prosecution. The prohibition action is premised on D.H.'s challenge to the sufficiency of proceedings before the Juvenile Division of the Montgomery County Court of Common Pleas ("Juvenile Court"). The judge presiding over those proceedings is not a party to this action, but was named in a contemporaneously-filed case. See *State of Ohio, ex rel., D.H. v. The Honorable Anthony Capizzi*, Montgomery App. No. 27068. D.H. asserts that Judge

Capizzi should have taken additional steps during bindover proceedings. His alleged failure to do so, according to D.H., deprived the General Division of the Montgomery County Court of Common Pleas (the “Adult Court”) and Respondents of jurisdiction. At the time the prohibition complaint was filed, D.H. had been transferred to the Adult Court by a March 9, 2016 order of the Juvenile Court, but had not been indicted in the Adult Court.

{¶ 2} On May 6, 2016, Respondents filed a motion to dismiss pursuant to Civ.R. 12(B)(6). They assert that D.H. was properly bound over to the Adult Court after a hearing, and that D.H. cannot satisfy two prongs of the test for a writ of prohibition. D.H. filed a response to the motion on June 29, 2016. He argues that violations of due process rendered the bindover proceedings improper, depriving the Adult Court of jurisdiction.

{¶ 3} For the following reasons, we sustain the motion to dismiss.

Procedural History

{¶ 4} Delinquency proceedings against D.H. began in the Juvenile Court on April 8, 2014. On June 11, 2014, the Juvenile Court found D.H. not amenable to care or rehabilitation within the juvenile system and transferred him to the Adult Court for prosecution. D.H. ultimately pled no contest and was sentenced by the trial court on September 10, 2014.

{¶ 5} D.H. appealed. This court, concluding that the Juvenile Court had “failed to identify its reasoning for reaching its finding that D.H. could not be rehabilitated in the juvenile system sufficiently to permit us to conduct meaningful appellate review of its decision,” reversed:

[T]his cause is remanded to the juvenile court for re-consideration of its

decision to relinquish jurisdiction, and to provide a more thorough explanation as to why D.H. can, or cannot, be rehabilitated in the juvenile system, with sufficient findings of fact and reasoning to permit us to review that decision under an abuse-of-discretion standard of appellate review, should either party choose to appeal.

State v. D.H., 2d Dist. Montgomery No. 26383, 2015-Ohio-3259, ¶ 2, 19, *appeal not accepted*, 144 Ohio St.3d 1477, 2016-Ohio-467, 45 N.E.3d 244.

{¶ 6} On March 9, 2016, Judge Capizzi issued an entry entitled “On Remand Motion to Relinquish Jurisdiction and Transfer to Juvenile Division,” again transferring D.H. to the Adult Court. This prohibition action was filed thereafter, on March 31, 2016.

Standard for a Motion to Dismiss

{¶ 7} Original actions in prohibition “ordinarily proceed as civil actions under the Ohio Rules of Civil Procedure.” Loc.App.R. 8(A). Respondents have moved to dismiss this prohibition action for failure to state a claim pursuant to Civ.R. 12(B)(6). The purpose of such a motion is to test a claim’s legal sufficiency. *MacConnell v. Dayton*, 2d Dist. Montgomery No. 25536, 2013-Ohio-3651, ¶ 11. A “Civ.R. 12(B)(6) motion must be judged on the face of the complaint alone.” *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 569, 664 N.E.2d 931 (1996).

{¶ 8} “Dismissal of the prohibition complaint for failure to state a claim upon which relief can be granted is appropriate if, after presuming the truth of all factual allegations of the complaint and making all reasonable inferences in [relator’s] favor, it appears beyond doubt that he can prove no set of facts entitling him to the requested extraordinary writ of prohibition.” *State ex rel. Hemsley v. Unruh*, 128 Ohio St.3d 307, 2011-Ohio-226, 943

N.E.2d 1014, ¶ 8. With respect to original actions, the Ohio Supreme Court has also held that “Civ.R. 12(B)(6) dismissals may be based on ‘merits’ issues such as the availability of an adequate remedy in the ordinary course of law.” *State ex rel. Hummel v. Sadler*, 96 Ohio St.3d 84, 2002-Ohio-3605, 771 N.E.2d 853, ¶ 20. The standard for such arguments is the same: whether it appears beyond doubt that relator can prove no set of facts warranting relief. *Id.*

Standard for Prohibition

{¶ 9} A writ of prohibition “is an extraordinary remedy which is customarily granted with caution and restraint, and is issued only in cases of necessity arising from the inadequacy of other remedies.” *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 73, 701 N.E.2d 1002 (1998) (internal citation and quotation omitted). It is “designed to prevent a tribunal from proceeding in a matter in which it seeks to usurp or exercise authority with which it had not been invested by law.” *State ex rel. McCaffrey v. City of Cleveland*, 54 Ohio St.2d 346, 347, 377 N.E.2d 490 (1978), citing *Marsh v. Goldthorpe*, 123 Ohio St. 103, 174 N.E. 246 (1930).

{¶ 10} Prohibition “tests and determines ‘solely and only’ the subject matter jurisdiction” of the trial court. *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 73, 701 N.E.2d 1002 (1998), quoting *State ex rel. Eaton Corp. v. Lancaster*, 40 Ohio St.3d 404, 409, 534 N.E.2d 46 (1988). It “is not a substitute for an appeal.” *State ex rel. Connor v. McGough*, 46 Ohio St.3d 188, 191, 546 N.E.2d 407 (1989).

{¶ 11} To be entitled to a writ of prohibition, D.H. must establish that (1) Respondents are about to exercise or have exercised judicial power, (2) Respondents’ exercise of judicial power is unauthorized by law, and (3) “denying the writ would result in

injury for which no other adequate remedy exists in the ordinary course of law.” *State ex rel. R.W. v. Williams*, 146 Ohio St.3d 91, 2016-Ohio-562, 52 N.E.3d 1176, ¶ 13. However, if the Respondents’ lack of jurisdiction is patent and unambiguous, D.H. need not establish the third prong, the lack of an adequate remedy at law. *State ex rel. Ford v. Ruehlman*, Slip Opinion No. 2016-Ohio-3529, ¶ 62, citing *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 15.

{¶ 12} Respondents move to dismiss on the second and third prongs.¹ We conclude that there is no patent and unambiguous lack of jurisdiction, and that D.H. has an adequate remedy in the ordinary course of law.

Respondents do not Patently and Unambiguously Lack Jurisdiction

{¶ 13} We begin by noting that D.H. has not alleged in his complaint that the Adult Court patently and unambiguously lacks jurisdiction, such that the existence of an adequate remedy is immaterial. *Ruehlman, supra*. For completeness, and for the purpose of determining whether the lack of an adequate remedy at law is a required element of D.H.’s claim here, we evaluate the jurisdictional basis for criminal proceedings in the Adult Court.

{¶ 14} As noted above, the determinative issue in prohibition is whether the respondent has subject matter jurisdiction. *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 73, 701 N.E.2d 1002 (1998). Courts evaluate subject matter jurisdiction by reference to relevant statutory and constitutional law. See *State ex rel. Shumaker v. Nichols*, 137 Ohio St.3d 391, 2013-Ohio-4732, 999 N.E.2d 630, ¶ 14-15 (noting the absence of any

¹ We make no determination on the first prong, whether all eleven Respondent Judges are about to exercise or have exercised judicial power.

particular statute or constitution provision alleged to have been violated).

{¶ 15} Because D.H. was 17 years old at the time delinquency proceedings began, he was initially subject to the exclusive jurisdiction of the Juvenile Court. “Juvenile courts possess exclusive jurisdiction over children alleged to be delinquent for committing acts that would constitute a crime if committed by an adult.” *In re M.P.*, 124 Ohio St.3d 445, 2010-Ohio-599, 923 N.E.2d 584, ¶ 11, citing R.C. 2151.23(A). When the Juvenile Court entered the March 9, 2016 order, D.H. was transferred to the Adult Court. By statute, such a transfer:

abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint, and, upon the transfer, all further proceedings pertaining to the act charged shall be discontinued in the juvenile court, and *the case then shall be within the jurisdiction of the court to which it is transferred* as described in division (H) of section 2151.23 of the Revised Code.

(Emphasis added.) R.C. 2152.12(I). Division (H) of section 2151.23 confirms that “[t]he court to which the case is transferred for criminal prosecution pursuant to [R.C. 2152.12] has jurisdiction subsequent to the transfer to hear and determine the case in the same manner as if the case originally had been commenced in that court * * *.”

{¶ 16} Here, the Adult Court is a “court of common pleas [that] has original jurisdiction of all crimes and offenses,” subject to some exceptions not relevant here. R.C. 2931.03. See *a/so* Ohio Constitution, Article IV, Section 4(B). The complaint asserts that Respondents are “duly elected, qualified, and active judges of the Montgomery County, Ohio Court of Common Pleas, General Division.” We therefore conclude that

Respondents do not patently and unambiguously lack subject matter jurisdiction over D.H. as transferred from the Juvenile Court. R.C. 2152.12(I); R.C. 2151.23(H); R.C. 2931.03. “The juvenile division’s bind-over order operated to confer exclusive jurisdiction to adjudicate those charges on the general division court.” *State v. Washington*, 2d Dist. Montgomery No. 20226, 2005-Ohio-6546, ¶ 26.

{¶ 17} D.H.’s argument focuses not on the statutes, but on the bindover proceedings. He argues that the Adult Court lacks subject matter jurisdiction because actions taken during the bindover proceeding violated his due process rights. Specifically, he alleges that on remand, the Juvenile Court considered additional information that was not submitted into evidence or provided to D.H., and that D.H. was not given the opportunity to question witnesses or make arguments about the information. According to D.H., these due process violations in the Juvenile Court render the Adult Court and Respondents entirely without subject matter jurisdiction.

{¶ 18} The genesis of this argument appears to be in *State v. Wilson*, a 1995 case in which the Supreme Court of Ohio held that “absent a proper bindover procedure pursuant to R.C. 2151.26 [now R.C. 2152.12], the juvenile court has the exclusive subject matter jurisdiction over any case concerning a child who is alleged to be a delinquent.” 73 Ohio St.3d 40, 44, 652 N.E.2d 196 (1995). Like other courts, “[w]e are uncertain precisely what the Ohio Supreme Court intended by using the phrase ‘proper bindover procedure.’ ” *State v. Legg*, 4th Dist. Pickaway No. 14CA23, 2016-Ohio-801, ¶ 31, fn. 3. In *Wilson*, the defendant was mistakenly believed to have been 18 years old at the time of the offense, and was never brought before a juvenile court. *Wilson* at 44. His conviction in adult court,

without any proceedings at all in the juvenile court, was deemed void. *Id.* The court relied in part on the statute that clearly so provided:

Any prosecution that is had in a criminal court on the mistaken belief that the child was eighteen years of age or older at the time of the commission of the offense shall be deemed a nullity * * *.

R.C. 2151.26(E), now R.C. 2152.12(H).

{¶ 19} Against this backdrop, we conclude that D.H. has not pled, and cannot prove, facts sufficient to constitute a patent and unambiguous lack of jurisdiction. The alleged violations do not implicate subject matter jurisdiction in the same manner as in *Wilson*. While D.H. may ultimately have a valid argument that the Adult Court lacked jurisdiction because of the alleged violations of his due process rights, it is not a patent and unambiguous lack of jurisdiction. Moreover, given the Supreme Court’s more recent affirmation that a “court’s subject-matter jurisdiction is determined without regard to the rights of the individual parties involved in a particular case,” we conclude that Respondents do not patently and unambiguously lack subject matter jurisdiction because of alleged due process violations. *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 19, citing *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 75, 701 N.E.2d 1002 (1998) and *Handy v. Ins. Co.*, 37 Ohio St. 366, 370 (1881).

{¶ 20} We make no determination as to the ultimate merits of D.H.’s argument concerning the Adult Court’s jurisdiction, both because this matter is before us on a Civ.R. 12(B)(6) motion to dismiss, and because the proper time for D.H. to make such an argument is on direct appeal, with full consideration of a record not currently before us. As

there is no patent and unambiguous lack of jurisdiction, we turn to the question of whether a direct appeal provides D.H. with an adequate remedy at law.

D.H. has an Adequate Remedy at Law

{¶ 21} Respondents argue that D.H. has an adequate remedy at law. They assert that he can raise his challenge to the bindover proceedings (and presumably, the Adult Court's alleged lack of jurisdiction) on direct appeal from any conviction in the Adult Court. D.H. responds that the remedy of appeal is not adequate under the circumstances, because it is not "speedy" and because D.H. will have lost the opportunity to receive care and rehabilitation in the juvenile system if his arguments about jurisdiction are correct.

{¶ 22} "Appeal is generally considered an adequate remedy sufficient to preclude a writ." *State ex rel. McCuller v. Cuyahoga Cty. Court of Common Pleas*, 143 Ohio St.3d 130, 2015-Ohio-1563, 34 N.E.3d 905, ¶ 12, citing *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph three of the syllabus. Here, the parties agree that D.H. can raise the issues concerning the Adult Court's jurisdiction and the Juvenile Court's bindover on direct appeal after any conviction in that court. See generally *In re Becker*, 39 Ohio St.2d 84, 87, 314 N.E.2d 158 (1974) (challenges to bindover proceedings must be raised on direct appeal from the judgment of the adult court).

{¶ 23} The Supreme Court of Ohio has affirmed the dismissal of prohibition actions on this ground. For example, in *State ex rel. Torres v. Simmons*, the court explicitly held that a transferred juvenile had an adequate remedy by way of appeal after conviction in adult court, and affirmed the Court of Appeals' dismissal of a complaint for prohibition. 68 Ohio St.2d 118, 119, 428 N.E.2d 862 (1981). More recently, in a slightly different factual

context, the Supreme Court confirmed that a juvenile's path to challenge the actions of a juvenile court is by an appeal after conviction. *State ex rel. R.W. v. Williams*, 146 Ohio St.3d 91, 2016-Ohio-562, 52 N.E.3d 1176. Without citation the court held: "[w]hile [the juvenile] asserts that he has no adequate remedy in the ordinary course of law, R.W. unquestionably has a remedy by way of appeal of any conviction." *Id.* at ¶ 14. And, in *State ex rel. McCuller v. Cuyahoga Cty. Court of Common Pleas*, 143 Ohio St.3d 130, 2015-Ohio-1563, 34 N.E.3d 905, the Supreme Court summarily held that the transferred juvenile "could have challenged these bindovers in his appeal of the criminal convictions, and therefore he had an adequate remedy" precluding mandamus and procedendo relief. *Id.* at ¶ 14.

{¶ 24} We conclude that D.H. can make his argument that the Adult Court lacked jurisdiction on direct appeal, and that this remedy is adequate. If D.H. is correct, the reviewing court can reverse the Adult Court's judgment for lack of jurisdiction. See *State v. Brown*, 2014-Ohio-314, 8 N.E.3d 345 (10th Dist.) (reversing conviction where adult court lacked jurisdiction because no bindover procedure held for certain charges). Appeal is the manner in which this issue is routinely brought to courts; it is how D.H. previously brought the issue to this court. Appeal is a "complete, beneficial, and speedy" avenue in which to challenge the Adult Court's jurisdiction. See *State ex rel. Beane v. Dayton*, 112 Ohio St.3d 553, 2007-Ohio-811, 862 N.E.2d 97, ¶ 31 (discussing adequate remedies).

{¶ 25} We disagree that an appeal is not a "speedy" remedy. As a general rule, the delay inherent in an appeal does not render that appeal an inadequate remedy. *State ex rel. McGinty v. Eighth Dist. Court of Appeals*, 142 Ohio St.3d 100, 2015-Ohio-937, 28 N.E.3d 88, ¶ 16. There has been no allegation that the Adult Court has delayed or will

delay D.H.'s criminal prosecution. There is no allegation that this court, exercising appellate jurisdiction, cannot promptly hear D.H.'s arguments and resolve them. While we are cognizant of time-related issues that may arise if D.H. is ultimately successful after pursuing his remedy, we conclude that this is not the relevant inquiry in this prohibition action. Prohibition tests solely the subject matter jurisdiction of the Adult Court. *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 73, 701 N.E.2d 1002 (1998). D.H. can make his argument challenging the Adult Court's jurisdiction in a timely manner on direct appeal and, if correct, can timely obtain the result he seeks here: a determination that the Adult Court lacks jurisdiction. D.H. does not cite, and we have not found, any authority for the position that an appeal is not an adequate remedy either because a juvenile is approaching majority or may be less likely to succeed in later proceedings. We follow the reasoning of *Torres, R.W.*, and *McCuller, supra*, and conclude that D.H. has an adequate remedy as a matter of law.

Conclusion

{¶ 26} Because D.H. has an adequate remedy at law, he can plead no set of facts warranting relief in prohibition. *State ex rel. Hummel v. Sadler*, 96 Ohio St.3d 84, 2002-Ohio-3605, 771 N.E.2d 853, ¶ 20. Respondents' motion to dismiss is therefore well-taken and is SUSTAINED. This matter is DISMISSED. The motion for a pre-hearing conference is OVERRULED as moot.

SO ORDERED.

MARY E. DONOVAN, Presiding Judge

JEFFREY E. FROELICH, Judge

JEFFREY M. WELBAUM, Judge

To The Clerk: Within three (3) days of entering this judgment on the journal, you are directed to serve on all parties not in default for failure to appear notice of the judgment and the date of its entry upon the journal, pursuant to Civ.R. 58(B).

MARY E. DONOVAN, Presiding Judge

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