

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

Douglas A. Patterson

Court of Appeals No. WD-11-061

Relator

v.

Judge David E. Woessner

DECISION AND JUDGMENT

Respondent

Decided: October 18, 2011

* * * * *

Douglas A. Patterson, pro se.

* * * * *

OSOWIK, P.J.

{¶ 1} Relator, Douglas A. Patterson, has filed a petition for a writ of prohibition against respondent, Judge David E. Woessner. In the petition, relator asks this court to issue a writ of prohibition, pursuant to R.C. Chapter 2731, prohibiting respondent from making a ruling that allows respondent insufficient visitation time with his minor daughter, B. Alternatively, relator asks us to "grant relator leave to file a Motion for Removal to Lucas County, Ohio, Juvenile Court * * *."

{¶ 2} In an attached memorandum in support, relator asserts that respondent has relied on "fraudulent and incorrect [consent] judgment entries" prepared by counsel for the mother of relator's child and, as a result, respondent has refused to grant relator sufficient parenting time with his daughter, B. Relator further asserts that, when relator brought such errors to respondent's attention, respondent "mocked relator by instructing him to bring in blank compact discs for audio copies of the proceedings." Relator states that he is seeking a writ of prohibition to prevent respondent from exercising his "unauthorized" power to deny relator the chance to enjoy a "healthy, bonded relationship" with his daughter.

{¶ 3} "A writ of prohibition is an extraordinary remedy which is granted with caution and restraint and is to be issued only if the exercise of judicial power is unauthorized by law and clearly an impermissible usurpation of judicial power." *State ex rel. Anderson v. Franklin Cty. Court of Common Pleas* (Apr. 9, 1981), 10th Dist. No. 80AP-895, citing *DuBose v. Court* (1980), 64 Ohio St.2d 169. In order to obtain a writ of prohibition, a relator must show that: "(1) the respondent against whom it is sought is about to exercise judicial power, (2) the exercise of such power is unauthorized by law, and (3) there is no adequate remedy at law." *State of ex rel. Smith v. Celebrezze*, 8th Dist. No. 93072, 2009-Ohio-5386, ¶ 7, citing *State ex rel. Largent v. Fisher* (1989), 43 Ohio St.3d 160. In cases where a relator claims that the respondent court lacks jurisdiction to proceed, "prohibition will not be issued unless it clearly appears that the court * * * has no jurisdiction of the cause which it is attempting to adjudicate, or [the court] is about to

exceed its jurisdiction." Id. citing *State ex rel. Ellis v. McCabe* (1941), 138 Ohio St. 417, paragraph three of the syllabus.

{¶ 4} Pursuant to R.C. 2151.23(A)(2), the juvenile court has jurisdiction "to determine the custody of any child not a ward of another court of this state * * *." Pursuant to R.C. 2151.23(F)(1), "[t]he juvenile court shall exercise its jurisdiction in child custody matters in accordance with sections 3109.04 [and] 3109.21 to 3109.36 * * * of the Revised Code." R.C. 3109.04 empowers the court to allocate parental rights and responsibilities, which includes the right of a non-custodial parent to continuing contact with his or her children.

{¶ 5} A review of relator's entire petition reveals that, rather than challenging respondent's jurisdiction to decide the issue of visitation with his daughter, relator is contesting respondent's method of exercising his jurisdiction. In addition, relator is erroneously attempting to enlist this court's aid in an attempt to control the outcome of respondent's exercise of jurisdiction, rather than waiting for the trial court's decision and then, if respondent disagrees, challenging the result on appeal. See *State ex rel. Erie Cty. Democratic Executive Committee v. Brown* (1966), 6 Ohio St.2d 136. ("[A] court of general jurisdiction has the power to determine its jurisdiction has [sic] the first instance, and that prohibition cannot be used as a short-cut appeal to question this jurisdiction." Id. at 138, citing *State ex rel. Miller v. Court of Common Pleas of Lake Cty.* (1949), 151 Ohio St. 397; *State ex rel. Winnefeld v. Court of Common Pleas of Butler Cty.* (1953), 159 Ohio St. 225; *State ex rel. Rhodes, Aud. v. Solether, Judge* (1955), 162 Ohio St. 559.

{¶ 6} On consideration, we find that relator has not demonstrated that respondent is about to exercise power which is unauthorized by law, or that relator has no other adequate remedy at law by which to obtain the relief sought. In addition, relator's motion to have this case removed to another jurisdiction is not properly raised in the context of an original action. The motion is denied. Relator's petition is dismissed on its face at relator's costs.

{¶ 7} To the Clerk of Court:

{¶ 8} The clerk is hereby directed to immediately serve **upon all parties** a copy of this dismissal of relator's petition for a writ of prohibition in a manner prescribed by Civ.R. 5(B).

WRIT DENIED.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

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: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
