[Cite as *State ex rel. R.W. v. Sweeney*, 2009-Ohio-3743.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93415

STATE OF OHIO, EX REL., R.W.

RELATOR

vs.

HON. KRISTEN W. SWEENEY

RESPONDENT

JUDGMENT:
WRIT DENIED

WRIT OF PROHIBITION AND MANDAMUS
MOTION NO. 423447
ORDER NO. 424466

RELEASE DATE: July 28, 2009

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MARY J. BOYLE, J.:

{¶ 1} On June 5, 2009, petitioner R.W., through the Public Defender's Office, filed an original action in prohibition and mandamus against Judge Kristen Sweeney. In his petition, R.W. asks this court to issue a writ directing Judge Sweeney to release him from home detention and terminate any future dispositional hearings. Thereafter, on June 24, 2009, Judge Sweeney, through the Cuyahoga County Prosecutor's

office, filed a motion for summary judgment. R.W. filed his opposition to the motion for summary judgment on July 1, 2009, to which respondent filed a reply brief instanter. For the following reasons, we grant the motion for summary judgment.

{¶ 2} In order to be entitled to a writ of prohibition, relators must establish that the respondent will or is about to exercise judicial or quasi-judicial power; that the exercise of such power is unauthorized by law; and that the denial of the writ will cause injury to relator for which no other adequate remedy in the ordinary course of law exists. *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 1997-Ohio-0202, 686 N.E.2d 267; *State ex rel. Largent v. Fisher* (1989), 43 Ohio St.3d 160, 540 N.E.2d 239.

{¶ 3} With regard to the second and third elements of a prohibition action, the Ohio Supreme Court has stated that if a trial court has general subject-matter jurisdiction over a cause of action, the court has the authority to determine its own jurisdiction and an adequate remedy at law via appeal exists to challenge any adverse decision. *State ex rel. Enyart v. O'Neill*, 71 Ohio St.3d 655, 1994-Ohio-0594, 646 N.E.2d 1110; *State ex rel. Pearson v. Moore* (1990), 48 Ohio St.3d 37, 548 N.E.2d 945.

{¶ 4} However, the Supreme Court has also recognized an exception to this general rule. "Where an inferior court patently and unambiguously lacks jurisdiction over the cause *** prohibition will lie to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions."

State ex rel. Fogle v. Steiner, 74 Ohio St.3d 158, 1995-Ohio-278, 656 N.E.2d 1288, citing *State ex rel. Lewis v. Moser*, 72 Ohio St.3d 25, 28, 1995-Ohio-148, 647 N.E.2d 155. Thus, if the lower court's lack of jurisdiction is patent and unambiguous, the availability of an adequate remedy at law is immaterial. *State ex rel. Rogers v. McGee Brown*, 80 Ohio St.3d 408, 1997-Ohio-334, 686 N.E.2d 1126.

{¶ 5} Furthermore, prohibition does not lie unless the relator clearly demonstrates that the court has no jurisdiction of the cause or the court is about to exceed its jurisdiction. *State ex rel. Ellis v. McCabe* (1941), 138 Ohio St. 417, 35 N.E. 2d 571. Finally, prohibition must be used with great caution and should not be used in doubtful cases. *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas* (1940), 137 Ohio St. 273, 28 N.E.2d 641.

{¶ 6} In this matter, R.W. is a juvenile defendant in case numbers DL08124392 and DL07104292 in Cuyahoga County Juvenile Court. On May 22, 2007, R.W. entered an admission to three misdemeanor offenses in Cuyahoga County Juvenile Court Case No. DL07104292. After his admission, Judge Sweeney placed R.W. into secure detention for three days. On May 25, 2007, R.W. was released from secured detention and returned to the youth development center in case number DL07104292 as ordered in case number DL05107133. According to the attached docket, R.W. failed to appear for a review hearing scheduled for August 30, 2007 and a warrant was issued. On June 9, 2008, R.W. was apprehended and arraigned for failure to appear at a review hearing.

{¶ 7} Thereafter, on July 30, 2008, in case number DL08124392, R.W. was referred for disposition after being found delinquent for two counts of felonious assault and a one-year firearm specification. On August 5, 2009, Judge Sweeney ordered R.W. into the custody of the Ohio Department of Youth Services (ODYS) for a minimum of one year for the felonious assault charges to be served consecutively to the one-year firearm specification. Also on that same date, in case number DL07104292, Judge Sweeney issued an entry which stated, "For disposition, see Case No. DL08124392."

{¶ 8} R.W. appealed case number DL08124392 and this court reversed and ordered the convictions vacated. See *In re R.W.*, Cuyahoga App. No. 91923, 2009-Ohio-1255.[1] Thereafter, on May 19, 2009, Judge Sweeney released R.W. from ODYS, but placed him on home detention for case number DL07104292. Based upon this order R.W. filed this prohibition and mandamus action.

{¶ 9} The crux of R.W.'s argument is that Judge Sweeney no longer has jurisdiction over case number DL07104292 since R.W. completed his disposition when he served the three days in custody after the May 22, 2007 hearing. In support of this argument, relator cites *In re Cross*, 96 Ohio St.3d 328, 2002-Ohio-4183 which explains that a juvenile court loses jurisdiction over a delinquent juvenile once the original dispositional sentence has been completed. Judge Sweeney argues that the

[1] A review of this court's docket indicates that R.W. did not appeal case number DL07104292.

three days was not a final disposition of the charges but rather a placement of the child in detention pending further hearing pursuant to Juv.R. 7.

{¶ 10} After reviewing this matter, we find that R.W. has not clearly demonstrated to this court that the May 22, 2007 order was the final disposition in case number DL07104292. Accordingly, R.W. has not demonstrated that Judge Sweeney was patently and unambiguously without jurisdiction to proceed. In reaching this conclusion we note that the May 22, 2007 order failed to include any reference that the three days in custody was the final disposition of the matter. Additionally, when Judge Sweeney ordered him to ODYS after the three days in detention, there was no objection that Judge Sweeney no longer had jurisdiction over R.W. in case number DL07104292. Furthermore, when the court issued the order on August 5, 2008, the order actually referred to the sentence as a disposition. Accordingly, we find that R.W. has not adequately demonstrated that his three days in custody was the final disposition in case number DL07104292.

{¶ 11} We also find that R.W. has an adequate remedy at law. While R.W. focuses on the May 12, 2009 order, if Judge Sweeney lost jurisdiction over case number DL07104292 on May 25, 2007, as argued by R.W., then she was also without jurisdiction when she issued the order on August 5, 2008. Accordingly, R.W. could have appealed that order which, whether it was used or not, constitutes an adequate remedy at law. See *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108; *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of*

Appeals for Cuyahoga Cty. (1990), 56 Ohio St.3d 33, 564 N.E.2d 86; *State ex rel. Provolone Pizza , LLC. v. Callahan*, Cuyahoga App. No. 88626, 2006-Ohio-660; *State ex rel. Grahek v. McCafferty*, Cuyahoga App. No. 88614, 2006-Ohio-4741. Consequently, R.W.'s ability to raise this issue on appeal prevents this court from issuing a writ of prohibition.

{¶ 12} We also deny R.W.'s action in mandamus. In order for this court to issue a writ of mandamus, R.W. must establish that he has a clear legal right to the requested relief; that the respondent has a clear legal duty to perform the requested relief; and there must be no adequate remedy at law. *State ex rel. Manson v. Morris* (1993), 66 Ohio St. 3d 440, 613 N.E.2d 232, citing *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St. 3d 28, 451 N.E.2d 225. Moreover, mandamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. "The duty to be enforced by a writ of mandamus must be specific, definite, clear and unequivocal." *State ex rel. Karmasu v. Tate* (1992), 83 Ohio App.3d 199, 205, 614 N.E.2d 827. It should not be issued in doubtful cases. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1; *State ex rel. Shafer v. Ohio Turnpike Commission* (1953), 159 Ohio St. 581, 113 N.E.2d 14; *State ex rel. Cannole v. Cleveland Board of Education* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850.

{¶ 13} In denying R.W's claim in mandamus, we find that he failed to establish that Judge Sweeney has an absolute duty to release him from home arrest.

Additionally, as noted above, we find that the existence of an adequate remedy at law precludes this court from granting the writ of mandamus.

{¶ 14} Consequently, we grant respondent's motion for summary judgment and deny the writ. Relators to bear costs. It is further ordered that the clerk shall serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

Writ denied.

MARY J. BOYLE, JUDGE

CHRISTINE T. MCMONAGLE, P.J., and
PATRICIA A. BLACKMON, J., CONCUR