

[Cite as *State ex rel. Muhammad v. Williams*, 2011-Ohio-353.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 96260

**STATE OF OHIO, EX REL.
CHARLES MUHAMMAD, SR.**

RELATOR

VS.

AMINAH WILLIAMS, ET AL.

RESPONDENTS

**JUDGMENT:
PETITION DISMISSED**

Writ of Habeas Corpus

Order No. 440932

RELEASE DATE: January 24, 2011

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Charles Muhammad, Jr., (“Muhammad”) has filed a petition for a writ of habeas corpus through which he seeks custody of his minor child. Muhammad alleges that the minor child is unlawfully restrained of his liberty by Aminah Williams (“Williams”) and LaWanda Moody; that the detention is a direct result of an order of the Cuyahoga County Court of Common Pleas, Juvenile Division (“juvenile court”), that granted an ex parte motion of the guardian ad litem for the minor child and suspended

Muhammad's right to see or visit with the minor child. For the following reasons, we sua sponte dismiss the petition for a writ of habeas corpus.

Facts

{¶ 2} The following facts are gleaned from the petition for the writ of habeas corpus.:

{¶ 3} (1) Muhammad is the natural father of a minor male child born September 12, 2003, to LaWanda Moody;

{¶ 4} (2) on February 25, 2004, the juvenile court granted legal custody of the minor child to Muhammad and Williams;

{¶ 5} (3) on January 13, 2010, Williams filed a complaint for divorce against Muhammad in the Cuyahoga County Court of Common Pleas, Domestic Relations Division;

{¶ 6} (4) on May 12, 2010, Muhammad filed a motion with the juvenile court to grant him sole legal custody of the minor child;

{¶ 7} (5) on or about June 3, 2010, Williams obtained physical custody of the minor child;

{¶ 8} (6) on June 9, 2010, Williams filed a motion for sole legal custody of the minor child with the juvenile court;

{¶ 9} (7) on August 10, 2010, the juvenile court granted temporary custody of the minor child to Williams;

{¶ 10} (8) on August 17, 2010, Williams filed an emergency motion for custody of the minor child with the juvenile court;

{¶ 11} (9) on August 20, 2010, Williams was granted a divorce from Muhammad;

{¶ 12} (10) on September 2, 2010, Williams filed a report with the Cuyahoga County Dept. of Children and Family Services, which accused Muhammad of physically and emotionally abusing the minor child;

{¶ 13} (11) on September 17, 2010, the guardian ad litem for the minor child filed a motion, with the juvenile court, for the immediate termination of Muhammad's visitation rights with the minor child;

{¶ 14} (12) on September 18, 2010, the juvenile court granted the guardian ad litem's motion for termination of visitation rights and indefinitely suspended Muhammad's right to visit the minor child;

{¶ 15} (13) on October 19, 2010, Muhammad filed a motion to dissolve the order of the juvenile court, which terminated his right to visit with the minor child;

{¶ 16} "(14) as of the date of this decision, various custody motions, as well as the motion to dissolve the termination of Muhammad's right to visit with the minor child, remain pending with the juvenile court.

Legal Analysis

{¶ 17} Initially, we find that Muhammad’s petition for a writ of habeas corpus is fatally defective, which requires its dismissal. Muhammad has failed to comply with the pleading requirements of R.C. 2725.04(D). Muhammad’s petition does not contain a copy of either the order granting custody of the minor child or a copy of the order that terminated his visitation rights with the minor child. *Holloway v. Clermont Cty. Dept. of Human Serv.*, 80 Ohio St.3d 128, 1997-Ohio-131, 684 N.E.2d 1217. See, also, *McBroom v. Russell*, 77 Ohio St.3d 47, 1996-Ohio-80, 671 N.E.2d 10; *Bloss v. Rogers* (1992), 65 Ohio St.3d 145, 602 N.E.2d 602.

{¶ 18} Notwithstanding the aforesaid procedural defect, we find that a substantive examination of Muhammad’s petition does not support the granting of a writ of habeas corpus. Muhammad argues that the orders, as rendered by the juvenile court, have unlawfully deprived him of the legal custody of his minor child.

{¶ 19} The Supreme Court of Ohio, in *Howard v. Catholic Social Serv. of Cuyahoga Cty., Inc.*, 70 Ohio St.3d 141, 1994-Ohio-219, 637 N.E.2d 890, examined the principles of habeas corpus in child custody cases. The court initially noted that R.C. 2725.05 provides: “If it appears that a person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or magistrate, or by virtue of the judgment or order of a

court of record, and that the court or magistrate had jurisdiction to issue the process, render the judgment, or make the order, *the writ of habeas corpus shall not be allowed.*” (Emphasis added.) Thus, habeas corpus will not issue if the court or magistrate had jurisdiction to issue the order restraining a person’s liberty. Moreover, habeas corpus is an extraordinary remedy that is not available when there exists an adequate remedy in the ordinary course of the law. Habeas corpus may not be employed as a substitute for an appeal. *Thomas v. Huffman*, 84 Ohio St.3d 266, 1998-Ohio-540, 703 N.E.2d 315; *In re Coleman*, 95 Ohio St.3d 284, 2002-Ohio-1804, 767 N.E.2d 677; *Luchene v. Wagner* (1984), 12 Ohio St.3d 37, 465 N.E.2d 395.

{¶ 20} Herein, the juvenile court possessed the necessary jurisdiction to award temporary custody of the minor child to Williams and to further restrict the ability of Muhammad to visit the minor child. See R.C. 2151.23(A)(1), 2151.31(A), and 2151.35.3(A)(2). Of greater importance is the fact that exigent circumstances, which would allow this court to issue a writ of habeas corpus, are not present. We find that the juvenile court acted to insure the well being of the minor child. *Williams, et al. v. O’Malley*, Cuyahoga App. No. 94862, 2010-Ohio-3897.

{¶ 21} Finally, habeas corpus does not lie since there exists adequate remedies in the ordinary course of the law. In *Howard*, the Supreme Court

of Ohio held that although the petitioner possessed no right to an immediate appeal from a preadjudicatory emergency temporary custody order, appeal following a determination of the entire juvenile case constituted an adequate remedy that precluded the issuance of a writ of habeas corpus. *Williams*, supra; *Rothacker v. McCafferty*, Cuyahoga App. No. 81427, 2002-Ohio-4927. See, also, *Schneider v. Clipper*, Slip Opinion No. 2011-Ohio-6; *In re Bailey*, 98 Ohio St.3d 309, 2003-Ohio-859, 784 N.E.2d 109.

{¶ 22} Accordingly, we sua sponte dismiss Muhammad's petition for a writ of habeas corpus. Costs to Muhammad. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Petition dismissed.

FRANK D. CELEBREZZE, JR., JUDGE

MELODY J. STEWART, P.J., and
KATHLEEN A. KEOUGH, J., CONCUR