[Cite as *State ex rel. Wesley v. Cuyahoga Job & Family Servs. Office of Child Support Servs.*, 2015-Ohio-4691.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103107

STATE OF OHIO, EX REL.
NELSON R. WESLEY

RELATOR

vs.

CUYAHOGA JOB AND FAMILY SERVICES —
OFFICE OF CHILD SUPPORT SERVICES

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Prohibition
Motion No. 487772
Order No. 489538

RELEASE DATE: November 6, 2015

FOR RELATOR

Nelson R. Wesley, pro se
Inmate No. 654304
Lake Erie Correctional Institution
501 Thompson Road
Conneaut, Ohio 44030

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Nora Graham
Assistant County Prosecutor
The Justice Center 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MARY EILEEN KILBANE, P.J.:

{¶1} On June 9, 2015, the relator, Nelson Wesley, commenced this prohibition action against the respondent, Cuyahoga Job and Family Services — Office of Child Support Services (hereinafter "the County") to prohibit the County from enforcing any further or future income withholding for child support, including obtaining funds from his accounts. He argues that the County is usurping judicial power because he had never been served properly regarding the support order, that he was never told the exact amount owed, and that a motion to show cause filed in Juvenile Court was dismissed for lack of service. Alternatively, Wesley seeks injunctive relief to stop the support orders.

{¶2} On July 28, 2015, the County moved for summary judgment on the grounds that the County is not exercising judicial or quasi-judicial power and that Wesley has or had adequate remedies at law that preclude the writ of prohibition. Additionally, the court of appeals may not issue injunctive relief in original actions. Wesley filed a brief in opposition on August 17, 2015, and the County filed a reply brief on August 19, 2015. For the following reasons, this court grants the County's motion for summary judgment and denies Wesley's application for a writ of prohibition.

{¶3} In early 2000, Wesley submitted to genetic testing that determined he was the father of B.R. Then pursuant to R.C. Chapter 3111, specifically R.C. 3111.84, the County determined in April 2000, that Wesley would pay child support in the amount of $50 per month and provide 50 percent of B.R.'s medical care. In 2007, the County filed a complaint in contempt in *In re B.R.*, Cuyahoga J.C. No. SU07703398 in an effort to enforce the child support order. The juvenile court dismissed this contempt action for lack of service. In October 2013, the County modified Wesley's support order to $208.45 per month. It is from this factual and

legal background that Wesley brings this prohibition action to prevent the County from issuing withholding notices to his financial institutions to collect support payments for his child.

{¶4} The principles governing prohibition are well established. Its requisites are (1) the respondent against whom it is sought is about to exercise judicial power or quasi-judicial power, (2) the exercise of such power is unauthorized by law, and (3) there is no adequate remedy at law. *State ex rel. Largent v. Fisher*, 43 Ohio St.3d 160, 540 N.E.2d 239 (1989). Furthermore, if a petitioner had an adequate remedy, relief in prohibition is precluded, even if the remedy was not used. *State ex rel. Lesher v. Kainrad*, 65 Ohio St.2d 68, 417 N.E.2d 1382 (1981). Moreover, it should be used with great caution and not issue in a doubtful case. *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas*, 137 Ohio St. 273, 28 N.E.2d 641 (1940); and *Reiss v. Columbus Mun. Court*, 76 Ohio Law Abs. 141, 145 N.E.2d 447 (10th Dist.1956).

{¶5} To the extent that Wesley is arguing that prohibition should lie to prevent the County from issuing collection notices, his argument is ill-founded because the issuing of such notices is not the exercise of judicial or quasi-judicial power. In *State ex rel. Janosek v. Cuyahoga Support Enforcement Agency*, 8th Dist. Cuyahoga No. 92387, 2009-Ohio-1098, *aff'd*, 13 Ohio St.3d 126, 2009-Ohio-4692, 914 N.E.2d 404, the relator brought a prohibition action to stop the County from ordering the payment of support because he had accumulated a credit. This court ruled that prohibition would not lie because the County in seeking payment for the existing orders was not about to exercise judicial or quasi-judicial power, i.e., conducting a hearing resembling a judicial trial. So too in this case, the County is not exercising judicial power in issuing notices and trying to collect the money owed.

{¶6} To the extent that Wesley is arguing that the County usurped judicial power by initially finding that he was the father and that he owes child support without proper service and notification of amount owed, his argument is unpersuasive because he has or had an adequate remedy at law by bringing an action to contest the administrative finding through R.C. 2151.231. Additionally, R.C. Chapter 3111 and his submission to genetic testing clothe the County with sufficient authority to issue the finding of paternity, to determine the support obligation, and to collect the money.

{¶7} To the extent that Wesley is arguing that the constitutional principle of separation of powers prevents the County from seeking the funds without a court order, Wesley is actually seeking a declaratory judgment on the constitutionality of R.C. Chapter 3111. However, the court of appeals does not have original jurisdiction over declaratory judgment claims. *State ex rel. Ministerial Day Care Assn. v. Zelman*, 100 Ohio St.3d 347, 2003-Ohio-6447, 800 N.E.2d 21. Similarly, this court does not have the power to issue injunctive relief in original actions. Article IV, Section 3(B)(1), of the Ohio Constitution limits this court's original jurisdiction to actions in quo warranto, mandamus, procedendo, habeas corpus, and prohibition. As a corollary, this court has no original jurisdiction to issue injunctive relief. *Lakeland Bolt & Nut Co. v. Grdina*, 8th Dist. Cuyahoga No. 89955, 2007-Ohio-2908, and *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 632 (1967), paragraph four of the syllabus.

{¶8} To the extent that Wesley argues that the dismissal of the contempt action for lack of service deprives the County of jurisdiction to enforce the support order, such claim is unfounded. As indicated above, the administrative support order was lawfully issued in 2000, and Wesley failed to pursue his remedy to challenge that order. The 2007 contempt action in

juvenile court was an independent, ancillary effort to enforce the order. Its dismissal for lack of service had no effect on the support order.

{¶9} Thus, Wesley's arguments for obtaining a writ of prohibition are unfounded. Accordingly, this court grants the County's motion for summary judgment and denies the application for a writ of prohibition. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶10} Writ denied.

MARY EILEEN KILBANE, PRESIDING JUDGE

TIM McCORMACK, J., and
EILEEN T. GALLAGHER, J., CONCUR