[Cite as *State ex rel. Harris v. Capizzi*, 2022-Ohio-3661.]

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

STATE OF OHIO, EX REL. ANDREA M. HARRIS	:	Appellate Court Case No. 29278
Relator	:	
v.	:	
HON. ANTHONY CAPIZZI, JUDGE, ET AL.	:	[Original Action in Prohibition]
Respondents	:	

DECISION AND FINAL JUDGMENT ENTRY
October 4, 2022

PER CURIAM:

{¶ 1} Relator Andrea M. Harris filed a complaint seeking a writ of prohibition against Judge Anthony Capizzi and Magistrate John Kolberg of the Montgomery County Court of Common Pleas, Juvenile Division. She claims that the juvenile court patently and unambiguously lacks jurisdiction over the custody of A.Y.S., her minor child, and that a Nevada court, which entered a prior custody order, has exclusive jurisdiction over the child. Harris asks that we vacate the juvenile court's orders in Montgomery J.C. No. G-2017-

007314, and return custody of A.Y.S. to her. This matter is now ripe for a determination on the merits.

I. Facts and Procedural History

{¶ 2} According to the complaint and the exhibits attached thereto, Harris and Father, who have never been married, are the biological parents of A.Y.S., who was born in Nevada in 2012. In January 2014, a Nevada family court established custody and visitation rights regarding A.Y.S. through a shared parenting order. (Compl. Ex. A.) Four months later, Harris and A.Y.S. moved to Ohio; Father remained in Nevada.

{¶ 3} In 2016, the parents filed a joint stipulation regarding the custody order, which was adopted by the Nevada court. (Compl. Ex. B.) The parties' stipulation modified the holiday and visitation schedule and further provided that the parties would share joint legal custody of A.Y.S., but Harris would have full physical custody of the child. The parties expressly agreed that Harris would permanently reside in Ohio.

{¶ 4} On December 21, 2017, Maternal Grandfather filed a "motion for ex parte emergency order" in the Montgomery County Juvenile Court, seeking custody of A.Y.S. The parties agree that, at a hearing on the emergency custody motion, Harris informed the juvenile court about the Nevada custody order. (*See* Compl.; Answer ¶ 11.) Harris alleged that the magistrate responded that Nevada had lost jurisdiction because A.Y.S. was living in Ohio. Respondents deny that Magistrate Kolberg told Harris that Nevada had lost jurisdiction. (Answer ¶ 11.) The magistrate subsequently granted interim temporary emergency custody of A.Y.S. to Maternal Grandfather. (Compl. Ex. C.) On March 8, 2018, the juvenile court granted legal custody of A.Y.S. to Maternal Grandfather, terminated

Father's out-of-state child support obligation, and granted parenting time to Harris. (Compl. Ex. D.)

{¶ 5} In June 2019, the Nevada family court terminated Father's child support obligation, retroactive to January 2018. (Compl. Ex. E.) Among the Nevada's court's findings were:

> (XX) Nevada has continuing exclusive jurisdiction pursuant to the Full Faith and Credit for Child Support Orders Act (FFCCSOA) (28 U.S.C. 1738B), and the Uniform Interstate Family Support Act (UIFSA) (NRS Chapter 13); the basis for this finding is: all orders were entered in the State of Nevada.
>
> (XX) The child has been in the custody of her grandfather since January of 2018.

{¶ 6} Harris filed her complaint for a writ of prohibition on October 18, 2021. Respondents moved to dismiss the complaint, pursuant to Civ.R. 12(B)(6), citing four bases for dismissal: (1) prohibition is a preventative writ, which cannot be used to seek review of actions that have already been performed; (2) the Montgomery County Juvenile Court was authorized under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to exercise jurisdiction over custody matters involving A.Y.S.; (3) Harris has an adequate remedy at law; and (4) Harris's requested relief is overly broad. Respondents attached several documents to their Civ.R. 12(B)(6) motion, including Maternal Grandfather's motion for ex parte emergency order and the magistrate's December 21, 2017 order granting interim temporary custody to Maternal Grandfather following an ex parte hearing (Exhibit A), and an

order by the magistrate, dated January 5, 2018, ordering Harris to submit to a drug screen (Exhibit B).

{¶ 7} We denied the motion to dismiss on February 11, 2022. We first concluded that Harris's complaint adequately alleged the exercise of judicial power by Judge Capizzi and Magistrate Kolberg, and that prohibition can be appropriately applied to vacate or undo prior jurisdictionally unauthorized actions. Next, we found that, upon construing Harris's complaint in the light most favorable to her, the facts alleged in her complaint supported her contention that Judge Capizzi and Magistrate Kolberg patently and unambiguously lacked authority to exercise judicial power regarding A.Y.S. Third, we concluded that Harris had alleged facts to support a conclusion that the juvenile court patently and unambiguously lacked jurisdiction to enter its legal custody order, and even if she were required to demonstrate the absence of an adequate remedy at law, the unique circumstances of this case raise a question of whether an adequate remedy existed. We ordered Respondents to file an answer to the complaint within 14 days, which they did.

{¶ 8} On March 15, 2022, we issued a scheduling order for how the case would proceed. Pursuant to that order, "[a]ll evidence to be considered by the court in determining the merits of this prohibition action" was to be filed by April 26, 2022. We noted that evidence in an original action "shall be submitted to the court by means of an agreed statement of facts, stipulations, depositions, interrogatories, requests for production of documents, and requests for admission." Loc.App.R. 8(E). At the parties' joint request, we extended the deadline to file the evidence to May 10, 2022.

{¶ 9} On May 20, 2022, the parties filed a joint stipulation, which stated that "discovery has been completed in the above captioned matter." No evidence accompanied that filing, nor have the parties otherwise filed any evidence in compliance with Loc.App.R. 8(E). The parties subsequently filed merit briefs, which cite to the exhibits attached to Harris's complaint and Respondents' motion to dismiss.

II. Standard for a Writ of Prohibition

{¶ 10} A writ of prohibition is "an extraordinary judicial writ issuing out of a court of superior jurisdiction and directed to an inferior tribunal commanding it to cease abusing or usurping judicial functions." *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 73, 701 N.E.2d 1002 (1998), citing *State ex rel. Burtzlaff v. Vickery*, 121 Ohio St. 49, 50, 166 N.E. 894 (1929). To warrant a writ of prohibition, a relator must establish that (1) the trial judge has exercised judicial power or is about to do so; (2) the trial judge lacks authority to exercise that power; and (3) denying the writ would result in injury for which no adequate remedy exists in the ordinary course of the law. *State ex rel. Sponaugle v. Hein*, 153 Ohio St.3d 560, 2018-Ohio-3155, 108 N.E.3d 1089, ¶ 23. If the trial judge's lack of jurisdiction is patent and unambiguous, the relator does not need to establish that there is a lack of an adequate remedy at law. *State ex rel. Ford v. Ruehlman*, 149 Ohio St.3d 34, 2016-Ohio-3529, 73 N.E.3d 396, ¶ 62. Absent a patent and unambiguous lack of jurisdiction, a relator's ability to appeal generally bars relief in prohibition. *Johnson v. Sloan*, 154 Ohio St.3d 476, 2018-Ohio-2120, 116 N.E.3d 91, ¶ 24.

III. Analysis

{¶ 11} In her merit brief, Harris asserts that the Montgomery County Juvenile Court patently and unambiguously lacks subject matter jurisdiction over the custody of A.Y.S., because Nevada is the child's home state, the juvenile court does not have the statutory authority under R.C. 3127.17 to modify the Nevada custody order, no grounds existed for the juvenile court to exercise emergency jurisdiction under R.C. 3217.18, and the juvenile court failed to make a determination about her unsuitability. She contends that a writ of prohibition is the appropriate remedy.

{¶ 12} Respondents reply that they had jurisdiction over the custody of A.Y.S. pursuant to R.C. 3127.18, the emergency jurisdiction provisions. They note that Father never responded or appeared for the proceedings and Harris, who did appear at all hearings, agreed to the juvenile court's March 8, 2018 order. They further state that "there is no reason to believe that the Washoe County Family Division Court of Nevada was not aware or declined the change in custody" from Harris to Maternal Grandfather. Respondents assert that, "[u]ltimately, Respondents were authorized to modify the prior court order * * *." They conclude that Harris cannot establish any of the elements for prohibition.

A. The Evidence of Record

{¶ 13} We begin with the record before us. As stated above, Harris attached several exhibits to her complaint for a writ of prohibition, including:

(1) Nevada court's order adopting the master's findings and recommendations (Feb 13, 2014), along with the family master's decision (Compl. Ex. A);

(2) Nevada stipulated custody order (Jan. 27, 2016) (Compl. Ex. B);

(3) Ohio magistrate's interim order (Jan. 8, 2018) (Compl. Ex. C);

(4) Ohio magistrate's decision and judge's order (Mar. 8, 2018) (Compl. Ex. D);

(5) Nevada master's findings and recommendations to terminate Father's child support (June 11, 2019) (Compl. Ex. E).

Respondents also filed two exhibits in support their motion to dismiss: (1) the magistrate's December 21, 2017 interim order, with the motion for ex parte emergency order (Resp. Ex. A); and (2) the magistrate's January 5, 2018 interim order (Resp. Ex. B).

{¶ 14} The parties stipulated on May 20, 2022 that discovery was complete, but they did not present us with any evidence in accordance with Loc.App.R. 8(E) and (F). Harris's complaint was not verified and, therefore, does not constitute evidentiary material. *Compare, e.g*., *Johnson v. Clark Cty. Aud*., 2020-Ohio-3201, 155 N.E.3d 199, ¶ 39 (2d Dist.) (complaint and attached exhibits, which were verified by an affidavit, were properly before the trial court for purposes of summary judgment motion); *Russell v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 19AP-424, 2019-Ohio-4695, ¶ 16 ("Sworn pleadings, such as a verified complaint, constitute evidentiary material under Civ.R. 56(C)."). In addition, unsworn statements of counsel in memoranda do not constitute evidence. *State ex rel. Spencer v. E. Liverpool Planning Comm.*, 80 Ohio St.3d 297, 301, 685 N.E.2d 1251 (1997).

{¶ 15} In their merit briefs, the parties rely on the exhibits attached to the complaint and the motion to dismiss. We infer that they believe that we may take judicial notice of those documents. We cannot.

{¶ 16} Evid.R. 201 allows an adjudicative fact (i.e., a fact of the case) to be judicially noticed if the fact is "not subject to reasonable dispute in that it is either (1) generally known

within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Evid.R. 201(A-B); *e.g., Harrah's Ohio Acquisition Co., LLC v. Cuyahoga Cty. Bd. of Revision*, 154 Ohio St.3d 340, 2018-Ohio-4370, 114 N.E.3d 192, ¶ 30; *Evans v. Jeff Wyler Chrysler Jeep Dodge Ram of Springfield*, 2018-Ohio-1726, 111 N.E.3d 901, ¶ 26 (2d Dist.). A court is required to take judicial notice if requested by a party and supplied with the necessary information. Evid.R. 201(D); *Huber Hts. Veterans Club, Inc. v. Grande Voiture d'Ohio La Societe des 40 Hommes et 8 Chevaux*, 2d Dist. Montgomery No. 29078, 2021-Ohio-2695, ¶ 31.

{¶ 17} Historically, we have held that a trial court was not permitted to take judicial notice of the record in other litigation, even when that action was before the same court. *E.g., Roberts v. Jackass Flats, L.L.C*., 2d Dist. Montgomery No. 26811, 2016-Ohio-610, ¶ 12; *MacConnell v. Dayton*, 2d Dist. Montgomery No. 25536, 2013-Ohio-3651, ¶ 14, fn. 2; *Davis v. Haas*, 2d Dist. Montgomery No. 24506, 2011-Ohio-5201, ¶ 19. The rationale for that approach was that when judicial notice is taken of proceedings in another case, those proceedings are not part of the record as defined in App.R. 9, and whether the trial court correctly interpreted such proceedings was not reviewable by an appellate court. *Davis* at ¶ 20. Accordingly, parties were required to provide the trial court with evidence of the filings in the other proceeding in accordance with Civ.R. 56(C), such as a certified copy of the filing in the other case or an affidavit that incorporated that filing. *See id.* at ¶ 21.

{¶ 18} It is now well established that we may take judicial notice of judicial opinions and public records accessible through the Internet. *E.g., Huber Hts. Veterans Club, Inc. v.*

Bowman, 2d Dist. Montgomery No. 29175, 2021-Ohio-3944, ¶ 22 ("courts may take notice of judicial opinions as well as records that are accessible over the Internet"); *Clark v. Beyoglides*, 2021-Ohio-4588, 182 N.E.3d 1212, ¶ 6 (2d Dist.), fn.1; *State v. Reed*, 2d Dist. Montgomery No. 28272, 2019-Ohio-3295, ¶ 23; *State v. Bevers*, 2d Dist. Montgomery No. 27651, 2018-Ohio-4135, ¶ 13. It is common practice for courts to take judicial notice of publicly accessible online court dockets. *See State v. Estridge*, 2d Dist. Miami No. 2021-CA-25, 2022-Ohio-208, ¶ 12, fn. 1.

{¶ 19} Juvenile court cases, however, are not publicly available. Neither the juvenile court case docket nor the filings in Montgomery J.C. No. G-2017-007314 (the custody action involving A.Y.S.) is accessible over the internet. And while the case docket for Harris's custody case in Washoe County, Nevada, is publicly available, the filings in that case are not. Because the court records from the relevant Washoe County, Nevada, and Montgomery County, Ohio, cases are not readily accessible over the internet, we cannot take judicial notice of them.

{¶ 20} In short, the parties have not presented us with any evidentiary materials from which to evaluate Harris's claim for a writ of prohibition. Harris bore the burden of proof on her petition for a writ of prohibition, which included the burden to "introduce evidence to overcome the presumption of regularity that attaches to all court proceedings." *Chari v. Vore*, 91 Ohio St.3d 323, 325, 744 N.E.2d 763 (2001) (discussing burden in habeas corpus proceeding). In the absence of any evidence to support Harris's request, she has failed to demonstrate her entitlement to a writ of prohibition, and her petition for such a writ must be denied.

B. Merits of Harris's Claim based on Attached Exhibits

{¶ 21} Although the parties did not properly present the exhibits attached to Harris's complaint and the Respondents' motion to dismiss as evidentiary materials, they both rely on those documents without objection. Even if we were consider those documents to be agreed evidentiary materials, we would nevertheless conclude that Harris's petition for a writ of prohibition fails.

1. *Exercise of Judicial Power*

{¶ 22} In their merit brief, Respondents repeat their assertion that Harris cannot meet the first requirement for a writ of prohibition – the trial judge has exercised judicial power or is about to do so – because there is nothing pending in the Montgomery County Juvenile Court over which they are about to exercise judicial power. However, as we stated in denying Respondents' motion to dismiss, prohibition is not limited to only future acts, but appropriately can be applied to vacate or undo prior jurisdictionally unauthorized actions. *State ex rel. Lomaz v. Court of Common Pleas of Portage Cty*., 36 Ohio St.3d 209, 212, 522 N.E.2d 551 (1988). *See also State ex rel. Sponaugle v. Hein*, 2017-Ohio-1210, 87 N.E.3d 722, ¶ 29 (prohibition may be used to vacate previous actions). Here, the exhibits demonstrate that Magistrate Kolberg and Judge Capizzi exercised jurisdiction over the custody of A.Y.S. This evidence is sufficient to satisfy the first requirement.

2. *Authority to Exercise Judicial Power*

{¶ 23} The parties focus on the second requirement for a writ of prohibition, namely that the trial judge lacks authority to exercise judicial power. Respondents claim in their

merit brief that their exercise of jurisdiction over A.Y.S. was authorized by the emergency custody provision of the UCCJEA, codified at R.C. 3127.18.

{¶ 24} "The purpose of the UCCJEA is to help resolve interstate custody disputes and to avoid jurisdictional competition with courts of other jurisdictions in custody matters." *Lafi v. Lafi*, 2d Dist. Miami No. 2007 CA 37, 2008-Ohio-1871, ¶ 9, citing *State ex rel. Morenz v. Kerr*, 104 Ohio St.3d 148, 2004-Ohio-6208, 818 N.E.2d 1162, ¶ 16. In Ohio, the Act is codified in R.C. Chapter 3127. Nevada also has adopted the UCCJEA. *See* Nev.Rev.Stat. 125A.005, et seq.

{¶ 25} The UCCJEA replaced the Uniform Child Custody Jurisdiction Act ("UCCJA"), which was drafted in 1968 and adopted by Ohio in 1977. *In re M.R.F.-C.*, 2020-Ohio-4400, 158 N.E.3d 688, ¶ 15 (2d Dist.). *See also Justis v. Justis*, 81 Ohio St.3d 312, 314, 691 N.E.2d 264 (1998), citing former R.C. 3109.21 to 3109.37. "The most significant change[ ] the UCCJEA makes to the UCCJA is giving jurisdictional priority and exclusive continuing jurisdiction to the home state." *Rosen v. Celebrezze*, 117 Ohio St.3d 241, 2008-Ohio-853, 883 N.E.2d 420, ¶ 21.

{¶ 26} The UCCJEA sets forth four alternative bases for a court to make an initial determination in a child custody proceeding: home-state jurisdiction, significant-connection jurisdiction, jurisdiction because of declination of jurisdiction, and default jurisdiction. R.C. 3127.15(A)(1)-(4); Nev.Rev.Stat. 125A.305(1). "Home state" is defined as

> the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately preceding the commencement of a child custody proceeding and, if a child is less than six months old, the state

> in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

R.C. 3127.01(B)(7); *see* Nev.Rev.Stat. 125A.085. Under R.C. 3127.01(B)(5), a child custody action is "commenced" by the filing of the first pleading in a proceeding.

{¶ 27} Exhibit A to Harris's complaint establishes that Nevada was A.Y.S.'s home state in February 2014, when an initial custody and visitation order was filed. A.Y.S. was born in Nevada in January 2012, and both she and her parents resided in Nevada until Harris and A.Y.S. moved to Ohio in June 2014, after the initial custody and visitation order was rendered. The Nevada court modified the custody order on January 27, 2016. (Compl. Ex. B.)

{¶ 28} Section 202 of the UCCJEA addresses the home state's exclusive continuing jurisdiction. Under the model code, the home state's continuing jurisdiction is exclusive until either of two events occurs. Section 202(a)(1) terminates home state exclusive jurisdiction where a substantial connection to the State no longer exists and substantial evidence about the child is no longer available. However, Ohio did not adopt that provision. Rather, Ohio adopted only Section 202(a)(2) of the UCCJEA, which states that the home state retains exclusive continuing jurisdiction "until the court or a court of another state determines that the child, the child's parents, *and* any person acting as a parent do not presently reside in this state." (Emphasis added.) R.C. 3127.16.

{¶ 29} An Ohio court may not modify a child custody determination made by another state, unless the Ohio court has jurisdiction to make an initial determination under R.C. 3127.15(A)(1) or (A)(2) and either (1) the court of the other state determines that it no longer

has exclusive continuing jurisdiction or Ohio would be a more convenient forum, or (2) the child, the child's parents, *and* any person acting as a parent do not presently reside in the other state. (Emphasis added.) R.C. 3127.17.

{¶ 30} However, the UCCJEA permits a court to exercise temporary emergency jurisdiction if the child is present in the State and either (1) the child has been abandoned, or (2) it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse. R.C. 3127.18(A); Nev.Rev.Stat. 125A.335(1). If a child custody determination has been made in another state, the court must immediately communicate with the court of the other state to resolve the emergency, protect the safety of the parties and the child, and set a period for the duration of the temporary order. R.C. 3127.18(D); *State ex rel. V.K.B. v. Smith*, 138 Ohio St.3d 84, 2013-Ohio-5477, 3 N.E.3d 1184, ¶ 13.

{¶ 31} Respondents claim that they exercised jurisdiction over A.Y.S. pursuant to R.C. 3127.18, because the child was subjected to or threatened with mistreatment or abuse by Harris. They appear to have abandoned their initial contention that the juvenile court also had jurisdiction to modify the Nevada custody order under R.C. 3127.17 and/or due to abandonment by Father.

{¶ 32} Maternal Grandfather filed a motion for an ex parte emergency order. Resp.'s Ex. A. The motion detailed that Harris was using drugs and previously had been addicted to opiates. Maternal Grandfather stated that Harris was argumentative and combative, took her anger out on A.Y.S., was constantly moving, left A.Y.S. with a drug dealer for daycare, and was driving A.Y.S. to a school 75 miles away. He stated that Harris had an altercation

with her own mother (Maternal Grandfather's ex-wife) the month before and called her mother a "f*cking bitch" in A.Y.S.'s presence. While Maternal Grandmother was away for three weeks, Harris moved into Maternal Grandmother's apartment without permission and stole her car. Maternal Grandfather further indicated that A.Y.S. was born addicted to drugs, is very hyperactive, has a substantial hearing loss that has not been addressed, and is behind her peers in school. He wrote that Harris could not "see the wrong in her parenting or drug use." The allegations in Maternal Grandfather's motion, taken together, were sufficient to satisfy the "mistreatment or abuse" provision of R.C. 3127.18.

{¶ 33} The magistrate conducted a hearing on January 5, 2018, at which Harris and Maternal Grandfather appeared. Father was served with notice of the hearing but was not present. Respondents state in their merit brief that Harris "never raised the issue of jurisdiction in the trial court," but they agreed in their answer that Harris informed the magistrate of an "active custody order from Nevada" at the January 5th hearing. (Answer ¶ 11.) The magistrate also acknowledged and terminated Father's out-of-state child support obligation in a subsequent order. (Compl. Ex. D.) The parties dispute whether the magistrate made a comment that the Nevada court had lost jurisdiction. (*See id*.; Compl.)

{¶ 34} Following the January 5th hearing, the magistrate ordered Harris to undergo drug testing. (Resp. Ex. B.) The record does not reflect whether Harris complied and/or the results of any testing. Three days later, the magistrate gave interim temporary custody to Maternal Grandfather. (Compl. Ex. C.) The interim temporary custody order did not include a time duration, but the matter came before the court again for hearing on the custody motion. On March 8, 2019, the juvenile court terminated the interim temporary custody order

and granted legal custody to Maternal Grandfather. (Compl., Ex. D.) Respondents assert in their brief that Harris agreed to the order, but the parties did not provide a transcript of the March 8th hearing (or any other hearing) and the limited documentation before us does not substantiate Respondents' assertion.

{¶ 35} Harris argues that Respondents' claim of jurisdiction under R.C. 3127.18 is "fatally flawed," because the juvenile court failed to comply with R.C. 3127.18(C) and (D). Pursuant to R.C. 3127.18(D), upon being informed that a custody determination has been made in another state, the juvenile court is required to "immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order." A record must be made of the communication (except for matters concerning scheduling, court records, and the like), R.C. 3127.09(C), and "[t]he parties shall be informed promptly of the communication and granted access to the record." R.C. 3127.09(D).

{¶ 36} R.C. 3127.18(C) further requires the juvenile court to "specify in the order a period that the court considers adequate to allow the person seeking an order [i.e., Maternal Grandfather] to obtain an order from the state having jurisdiction under sections 3127.15 to 3127.17 of the Revised Code or a similar statute of another state." The Ohio order then remains in effect until an order is obtained from the other state (in this case, Nevada) within the period specified or until the period expires.

{¶ 37} Harris relies upon *State ex rel. V.K.B. v. Smith*, 138 Ohio St.3d 84, 2013-Ohio-5477, 3 N.E.3d 1184, to support her contention that Respondents lacked jurisdiction due to their failure to comply with the statutory requirements. She emphasizes that Respondents

failed to communicate with the Nevada court and the order granting interim temporary custody to Maternal Grandfather failed to specify a time limitation.

{¶ 38} With the limited documentation before us, there is no indication that Respondents "immediately" communicated with the Nevada court. The portion of the juvenile court record provided by the parties does not show that such a communication occurred. On the other hand, Harris has not provided evidence to prove that no communication happened.

{¶ 39} Harris's Exhibit E shows that the Nevada court somehow became aware of the Ohio proceedings. On June 11, 2019, a deputy district attorney appeared before the Nevada court on a "motion for review and modification" of Father's child support obligation; neither Harris nor Father appeared. (Compl. Ex. E.) In an order filed the same day, the Nevada court recognized that A.Y.S. "has been in the custody of her grandfather since January of 2018" and terminated Father's ongoing child support obligation. We note, however, that the Nevada child support order further stated that Nevada has "continuing exclusive jurisdiction" over child support matters because "[a]ll orders were entered in the State of Nevada." Considering that the juvenile court's March 8, 2018 order addressed child support for A.Y.S., it does not appear that the Nevada court was aware of that order.

{¶ 40} The record suggests that Respondents did not comply with the statutory requirements to communicate with the Nevada court, to memorialize the communication in the record, and to limit the effective dates of its temporary emergency custody order. While Respondents had the authority to enter its initial order for A.Y.S.'s safety, it is questionable whether they had the authority to enter subsequent orders, particularly the order granting

legal custody to Maternal Grandfather. Nothing before us establishes that the Nevada court agreed to cede its jurisdiction to Ohio. However, Harris also failed to affirmatively show that the Nevada court did not agree.

3*. Adequate Remedy at Law*

{¶ 41} Finally, we turn to whether Harris had an adequate remedy in the ordinary course of the law.

{¶ 42} The availability of an appeal is generally an adequate remedy precluding extraordinary relief in prohibition, even in child custody cases. *See State ex rel. M.L. v. O'Malley*, 144 Ohio St.3d 553, 2015-Ohio-4855, 45 N.E.3d 971, ¶ 9; *State ex rel. V.K.B. v. Smith*, 138 Ohio St.3d 84, 2013-Ohio-5477, 3 N.E.3d 1184, at ¶ 19 ("Ohio law has consistently applied the principle that appeal is an adequate remedy in cases involving child custody."), citing *Ross v. Saros*, 99 Ohio St.3d 412, 2003-Ohio-4128, 792 N.E.2d 1126, and *State ex rel. Mosier v. Fornof*, 126 Ohio St.3d 47, 2010-Ohio-2516, 930 N.E.2d 305. The availability of an appeal is an adequate remedy even if the relator fails to pursue the appeal. *State ex rel. Davies v. Schroeder*, 160 Ohio St.3d 29, 2020-Ohio-1045, 153 N.E.3d 27, ¶ 10, citing *State ex rel. Gaydosh v. Twinsburg*, 93 Ohio St.3d 576, 579, 757 N.E.2d 357 (2001).

{¶ 43} With the limited record before us, we cannot conclude that the juvenile court's lack of jurisdiction under R.C. 3127.18 was patent and unambiguous. R.C. 3127.18(A)(2) expressly provides that an Ohio court has temporary emergency jurisdiction if the child is present in the state, which A.Y.S. was, and it is "necessary in an emergency to protect the children because the child * * * is subjected to or threatened with mistreatment or abuse." Contrary to Harris's argument, Maternal Grandfather's motion raised sufficient concerns

about A.Y.S.'s treatment by Harris that the juvenile court could have reasonably concluded that court intervention was necessary to protect A.Y.S. under R.C. 3127.18(A)(2). Whether the juvenile court patently and unambiguously exceeded its authority by ultimately granting Maternal Grandfather legal custody is a much closer question, but one whose answer is hampered by the limited record.

{¶ 44} In *V.K.B*, the Ohio Supreme Court determined that an appeal would not be an adequate remedy in a case where "(1) custody has been removed from a parent who previously had been awarded permanent custody, (2) custody is awarded to a nonparent in an ex parte proceeding, (3) the juvenile court is not complying with the requirements of the Uniform Act or other applicable law, and (4) the juvenile court has issued a 'temporary' order with no indication of when a hearing or other action might be taken to resolve the case." *Id*. at ¶ 27. The supreme court noted:

> An "adequate remedy" in child-custody cases is unlike that in other types of cases, because for a child and her parent, time is the most precious of commodities. If a child is removed from her parent for a year, as has already occurred in this case, that year can never be replaced. If a writ is not issued and the case returned to the juvenile court in these circumstances, it may languish for one or two more years before the court issues an appealable order. The appeal can take an additional year or two by the time briefs are prepared and oral arguments delivered and the judges arrive at a conclusion.

Id. at ¶ 23.

{¶ 45} This case similarly involves the removal of a young child from her mother under an emergency order and the placement of that child with a non-parent/grandparent. The order granting interim temporary custody did not indicate the duration of the temporary order. The final order granting legal custody to Maternal Grandfather (which arguably was not based on the court's emergency jurisdiction) also has no expiration date.

{¶ 46} However, unlike *V.K.B.*, Harris is not seeking to void an ongoing temporary order. The order granting legal custody to Maternal Grandfather was permanent and final, and both the interim temporary custody order and the order of legal custody to Maternal Grandfather were rendered years before Harris filed her complaint for a writ of prohibition. Maternal Grandfather filed his motion on December 21, 2017. Interim temporary custody was granted, after a hearing, on January 8, 2018, and legal custody was granted on March 8, 2018. Harris did not file her complaint for a writ of prohibition until October 18, 2021, more than three and a half years later. The parties appear to agree that nothing is currently pending in the juvenile court case. Harris could have appealed the juvenile court's March 8, 2018 order granting legal custody to Maternal Grandfather, raising the court's alleged lack of jurisdiction. Harris apparently did not.

{¶ 47} Upon review of the record before us, it is apparent that Harris has sought a writ of prohibition as a substitute for an appeal, which she forewent. The juvenile court's final appealable order was issued approximately two and a half months after Maternal Grandfather's motion was filed. Harris could have appealed that ruling, and the appeal would have been expedited in accordance with Loc.App.R. 2.8. Harris also could have requested that the appeal be accelerated under Loc.App.R. 2.7. Any appeal from the

juvenile court's final order would have been resolved years ago. Under these circumstances, we cannot conclude that Harris lacked an adequate remedy at law.

IV. Conclusion

{¶ 48} Harris's petition for a writ of prohibition is DENIED.

{¶ 49} SO ORDERED.

MICHAEL L. TUCKER, Presiding Judge

JEFFREY M. WELBAUM, Judge

CHRISTOPHER B. EPLEY, 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)

MICHAEL L. TUCKER, Presiding Judge

Copies to:

Dalma Grandjean
James Miller
110 N. Main Street, Suite 1200
Dayton, Ohio 45402

Anu Sharma
Andrew French
301 W. Third Street, 5th Floor
Dayton, Ohio 45422

CA3/KL