

IN THE COURT OF APPEALS  
FIFTH APPELLATE DISTRICT  
COSHOCKTON COUNTY, OHIO

IN RE: :  
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 LEANNA M. VOLK :  
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 Relator : Hon. Patricia A. Delaney P.J.  
 : Hon. W. Scott Gwin  
 : Hon. William B. Hoffman  
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 :  
 : CASE NO. 2014CA0018  
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 :  
 : OPINION

CHARACTER OF PROCEEDING: Petition for Writ of Habeas Corpus

JUDGMENT: DISMISSED

DATE OF JUDGMENT ENTRY: October 27, 2014

APPEARANCES:

For Relator: (Pro Se)

Leanna M. Volk  
15344 County Road 429  
Coshockton, Ohio 43812

For Father:

Christie M.L. Thornsley  
309 Main Street  
Coshockton, OH 43812

Delaney, P.J.

{¶1} Petitioner, Leanna M. Volk, has filed a Petition for Writ of Habeas Corpus arguing the legal custodian of her children is not properly caring for the children. The father/custodian of the minor children, although not named as a respondent, has filed a motion requesting the writ be denied because Petitioner has an adequate remedy at law by way of appeal which she is currently pursuing and because Petitioner has not alleged the children are being withheld from her. Father states Petitioner was exercising her summer visitation at the time the petition was filed.

{¶2} In order to prevail on a petition for a writ of habeas corpus in a child custody case, the petitioner must establish that (1) the child is being unlawfully detained, and (2) the petitioner has the superior legal right to custody of the child. *Holloway v. Clermont Cty. Dept. of Human Serv.*, 80 Ohio St.3d 128, 130, 1997-Ohio-131, 684 N.E.2d 1217, 1219.

{¶3} The Supreme Court has consistently indicated that, in relation to child custody matters, the issuance of the writ should be “the exception rather than the general rule \* \* \*.” *Barnebey v. Zschach*, 71 Ohio St.3d 588, 646 N.E.2d 162 (1995).

{¶4} Before reaching the merits, we have determined the petition must be dismissed. We find Petitioner has failed to name the father of the children as a respondent as required. For this reason, the Petition must be dismissed. *State ex rel. Bruggeman v. Auglaize Cty. Court of Common Pleas*, 87 Ohio St. 3d 257, 257, 1999-Ohio-52, 719 N.E.2d 543, 544 (Dismissal of habeas petition affirmed where former husband was required to name former wife, who had custody of parties' child, as respondent in petition for writ of habeas corpus. . .).

{¶5} Further, we find additional procedural defects in the petition. R.C. 2524.04, requires a litigant requesting the issuance of a writ of habeas corpus to attach all necessary custody or commitment papers and verify the petition by affidavit. We find Petitioner has not attached any custody papers to the petition, and we find no affidavit of verity.

{¶6} Both the failure to attach pertinent custody papers as well as failure to verify the petition warrant dismissal. *Holloway v. Clermont Cnty. Dep't of Human Servs.*, 80 Ohio St. 3d 128, 132, 1997-Ohio-131, 684 N.E.2d 1217, 1220.

{¶7} Even if we were to address the merits, the petition would fail. It appears from the petition that Petitioner essentially takes issue with the trial court's allocation of parental rights and responsibilities and denial of visitation. "Like other extraordinary-writ actions, habeas corpus is not available when there is an adequate remedy in the ordinary course of law. *State ex rel. Fortson v. Kelly*, 102 Ohio St.3d 77, 2004-Ohio-1799, 806 N.E.2d 556, ¶ 7." *In re Complaint for Writ of Habeas Corpus for Goeller*, 103 Ohio St. 3d 427, 428, 2004-Ohio-5579, 816 N.E.2d 594, 595.

{¶8} Petitioner has or had an adequate remedy at law by filing a motion to modify the allocation of parental rights and responsibilities. *In re Complaint for Writ of Habeas Corpus for Goeller*, 103 Ohio St. 3d 427, 429, 2004-Ohio-5579, 816 N.E.2d 594, 596. The existence of an adequate remedy at law precludes the issuance of a writ of habeas corpus.

{¶9} For these reasons, the writ of habeas corpus will not issue. The complaint is dismissed.

By: Delaney, P.J.

Gwin, J. and

Hoffman, J. concur

[Cite as *In re Volk*, 2014-Ohio-4805.]