

IN THE SUPREME COURT OF OHIO

STATE ex rel. EDWARD PAYNE, :
Petitioner, : Case Number 07-1924
v. :
THE HONORABLE CARRIE E. GLAEDEN, :
Respondent. :

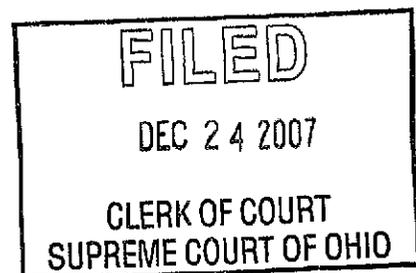
PETITIONER'S MOTION FOR RECONSIDERATION

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IN THE SUPREME COURT OF OHIO

STATE ex rel. EDWARD PAYNE,	:	
Petitioner,	:	Case Number 07-1924
v.	:	<u>MOTION FOR</u>
THE HONORABLE CARRIE E. GLAEDEN,:		<u>RECONSIDERATION</u>
Respondent.	:	

Now comes Petitioner Edward Payne, by and through counsel and pursuant to S. Ct. Prac. R. XI, Section 2(A), and respectfully requests this Court to reconsider its 6-1 decision decided on December 12, 2007, granting the Respondent's Motion to Dismiss. Based on the following, the Petitioner respectfully requests this Court to grant the relief of habeas corpus *or an alternative writ*.

On October 18, 2007, the Petitioner filed his Writ of Habeas Corpus with this Court, arguing that the Respondent's issuance of a temporary protection order in Franklin County Municipal Court Case Number 2007 CRB 19943 was contrary to law. In addition, the Petitioner asserted that the temporary protection order was an unlawful restraint on his liberty and that he had no other adequate remedy at law.

On October 25, 2007, the Respondent filed a Motion to Dismiss Petitioner's Writ, pursuant to Rule 12(b)(6) of the Ohio Rules of Civil Procedure. On November 5, 2007, the Petitioner filed his Memorandum Contra Respondent's Motion to Dismiss. On December 12, 2007, this Court granted the Respondent's Motion to Dismiss. Justice O'Donnell dissented with the majority and would have issued an alternative writ.

The Petitioner urges this Court to reconsider its decision dismissing this case. First, this is a novel issue of great public interest that has not been directly addressed by any Ohio appellate court. Second, while the Respondent argues that the Petitioner is not restrained of his movement or liberty and has an adequate remedy at law, this is not the case.

The temporary protection order attached to the Petitioner's writ speaks for itself—it restricts the Petitioner's freedom of movement. Contrary to Respondent's arguments, habeas corpus should not be solely limited to those individuals who seek release from prison. The plain language of Ohio Revised Code 2725.01 permits an individual who is "unlawfully restrained of his liberty" to seek habeas relief.

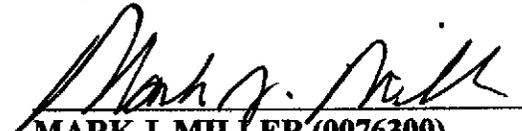
Furthermore, contrary to Respondent's arguments, the Petitioner here does not have an adequate remedy at law. The issuance of a temporary protection order is merely interlocutory and does not constitute a final appealable order. See *State v. Dawson* (Oct. 18, 1979), Franklin App. No. 79 AP-565, attached as Exhibit A. If the Petitioner were to file a formal appeal with an appellate court, the court would dismiss the appeal for lack of jurisdiction. *Id.* Also, if the Petitioner were to wait until the final disposition of the underlying case in municipal court (as Respondent suggests) the temporary protection order would become moot. Having the Petitioner wait until the conclusion of the case and then appealing gives the Petitioner no relief or remedy. Hence, the proper remedy is a writ of habeas corpus or alternative writ with this Court.

The Petitioner in this case has already exhausted all other remedies at law. For instance, before he filed his petition with this Court, he filed a motion to dismiss the temporary protection order with the trial court. See Petition, p. 5, para. 12. This motion was denied by the trial court. Petition, p. 6, para. 14. The Petitioner also sought relief with the Tenth District Court of Appeals

but was denied said relief. See Journal Entry, Sept. 18, 2007, *State ex rel. Edward Payne v. the Honorable Carrie Glaeden*, Tenth District Court of Appeals Case Number 07 AP 722, attached as Exhibit B. Therefore, Petitioner is left with no other adequate remedy at law but to seek relief from this Court.

Presuming that all factual allegations set forth in Petitioner's writ are true and making all reasonable inferences in his favor (as per the standard in Rule 12(b)(6)), the Petitioner maintains that he has satisfied his burden to defeat a motion to dismiss. As such, the Petitioner respectfully requests this Court to reconsider its decision, deny the Respondent's Motion to Dismiss and grant the requested relief of habeas corpus or an alterative writ.

Respectfully submitted,



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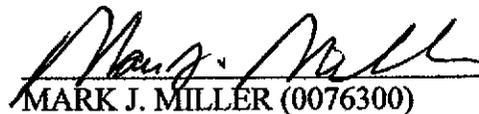
Phone: (614) 227-0007

Counsel for Petitioner,

Edward Payne

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon Mr. Glenn Redick, Counsel for Respondent, 90 West Broad Street, Room 200, Columbus, Ohio 43215, via ordinary U.S. Mail, this 24th day of December, 2007.



MARK J. MILLER (0076300)

CState of Ohio v. Dawson.

Ohio App. 10 Dist., 1979.

Only the Westlaw citation is currently available.
CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio, Tenth District, Franklin County.

State of Ohio, Plaintiff-Appellee,

v.

Richard Dawson, Defendant-Appellant.
No. 79AP-565.

October 18, 1979.

MR. GREGORY S. LASHUTKA, City Attorney,
MR. RONALD J. O'BRIEN, City Prosecutor, MR.
DAVID E. TINGLEY, Assistant, 375 South High
Street, 7th Floor, Columbus, Ohio, For Plaintiff-
Appellee.

MR. DOMINIC J. CHIEFFO, 529 South Third
Street, Columbus, Ohio, For Defendant-Appellant.

DECISION

McCORMAC, J.

*1 Appellee has moved the court to dismiss the appeal for lack of subject matter jurisdiction, contending that the appeal is not from a final order or judgment.

The state applied to the Franklin County Municipal Court for a temporary protection order against Richard Dawson on behalf of his wife, Judy Dawson. The application was pursuant to R. C. 2919.26.

After a cursory hearing, the court sustained the motion of the state for the temporary protection order and ordered defendant prohibited and restrained from visiting or approaching Judy Dawson or her place of residence and employment, without first obtaining the consent of the court to be in effect until the disposition of the criminal proceedings arising out of a complaint filed under Section 2919.25, Ohio Revised Code, or the issuance of a protection order pursuant to Section 3113.31, Ohio Revised Code.

The court further ordered defendant to post \$200 cash bail with the clerk of courts.

The complaint referred to in the court's order is an allegation by Judy Dawson that Richard Dawson had committed the charge of domestic violence on June 5, 1979, by knowingly causing physical harm to Judy Dawson, his wife, by means of hitting her in the face with his fist and kicking her in the left leg causing bruises. The complaint shows that both Richard and Judy Dawson reside at the same address.

One of the effects of the trial court order is that Richard Dawson is restrained from visiting or approaching his own place of residence without consent of court.

R. C. 2919.26 permits a judge to issue a temporary protection order as a pretrial condition of release with respect to a charge of domestic violence in violation of R. C. 2919.25.

As a pretrial condition of release, the temporary protection order differs from a temporary order issued pursuant to R. C. 3113.31 or a peace bond order issued pursuant to R. C. 2933.02 to 2933.10, both of which may be considered issued in a special proceeding essentially civil in nature.

However, a temporary protection order differs from a pretrial condition of release pursuant to Crim. R. 46(C) restricting the accused's associations or place of abode during release only in purpose. A Crim. R. 46(C) condition is to assure the defendant's appearance at trial, and a R. C. 2919.26 temporary protection order is to secure the safety and protection of family members. The danger to the safety of others is recognized as a reason to deny immediate pretrial release by Crim. R. 46(D).

*2R. C. 2919.26(E) expressly provides that a temporary protection order is "a pretrial condition of release" in addition to bail under Civ. R. 46. Therefore, an order imposing a pretrial condition of release pursuant to R. C. 2919.26 should be considered on the same basis as an order imposing conditions for pretrial release pursuant to Crim. R. 46(C). An order establishing pretrial conditions of release in a criminal case is interlocutory and not a final appealable order. See State v. Bevacqua (1946), 147 Ohio St. 20. The result should not vary because

the condition is a special one established by statute rather than by Crim. R. 46.

Since the temporary protection order is specifically designated as a pretrial condition of release, it can be challenged only in the same manner as other pretrial conditions of release in a criminal case.

Accordingly, the motion to dismiss is sustained and the appeal is dismissed for want of a final appealable order.

Motion sustained; appeal dismissed.

WHITESIDE and MOYER, JJ., concur.
Ohio App. 10 Dist., 1979.
State v. Dawson
Not Reported in N.E.2d, 1979 WL 209389 (Ohio App. 10 Dist.)

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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COURT OF APPEALS
TENTH APPELLATE DISTRICT

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CLEAR OF COURTS

State ex rel. Edward Payne, :

Relator, :

v. :

No. 07AP-722

The Honorable Carrie E. Glaeden, :

(REGULAR CALENDAR)

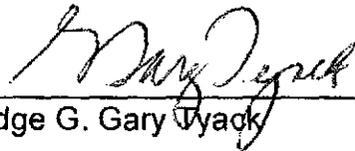
Respondent. :

JUDGMENT ENTRY

Relator has not demonstrated that respondent was without jurisdiction to grant a temporary protection order or that relator does not have an adequate remedy at law. Accordingly, relator's complaint for writs of mandamus and prohibition and for an emergency hearing are denied. This court *sua sponte* vacates the journal entry of September 13, 2007, appointing Magistrate Stephanie Bisca Brooks as the magistrate in this action.



Judge Susan Brown



Judge G. Gary Dyack

 ON COMPUTER 12

Judge Donna Bowman, retired of the Tenth Appellate District, assigned to active duty under the authority of Section 6(C), Article IV, Ohio Constitution.