Supreme Court of Ohio Clerk of Court - Filed February 04, 2015 - Case No. 2015-0076

IN THE
SUPREME COURT OF OHIO

PAULETTA HIGGINS,	:	**CASE NO. 2015-0076**
Petitioner,	:	This is an Original Action
vs.	:	**RESPONDENTS' MOTION TO DISMISS EMERGENCY EXTRAORDINARY WRIT, MOTION TO COMPEL**
HAMILTON COUNTY DEPT. CPS, et al.	:	
Respondents.	:	

MOTION TO DISMISS AND MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OF RESPONDENTS

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IN THE
SUPREME COURT OF OHIO

PAULETTA HIGGINS,	:	**CASE NO. 2015-0076**
Relator	:	This is an Original Action
vs.	:	**RESPONDENTS' MOTION TO DISMISS EMERGENCY EXTRAORDINARY WRIT, MOTION TO COMPEL**
HAMILTON COUNTY DEPT., CPS, et al.	:	
Respondents	:	
	:	

MOTION

Now comes Hamilton County Department of Jobs and Family Services ("HCJFS") [1], Hamilton County Juvenile Court ("Juvenile Court"), and Hamilton County Juvenile Court Magistrate Brenda Anthony (hereinafter "Respondents") through undersigned counsel, who respectfully move that this Emergency Extraordinary Writ, Motion to Compel ("the Petition") be dismissed for the reasons more fully set forth in the Memorandum below, incorporated herein by reference.

Respectfully submitted,

JOSEPH T. DETERS,
HAMILTON COUNTY PROSECUTOR

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[1] Relator names Hamilton County Dept., CPS as a Respondent when in fact the legal entity to which she refers as a practical matter is Hamilton County Jobs and Family Services ("HCJFS") which is a department under the purview of the Hamilton County Board of Commissioners. Consequently, Respondent HCJFS respectfully responds to Relator's Petition.

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MEMORANDUM

I. STATEMENT OF CASE

A. Procedural Posture

Relator filed this Petition on January 15, 2015. In addition to her Petition, Relator has filed three other cases which are pending before this Court. These cases include: Relator's "Original Action to Stop the Termination of Parental Rights Base on Facts of Disability Discrimination" filed December 10, 2014 (Case No. 2014-2117), Relator's "Notice of Appeal" and "Motion to Stay" filed January 13, 2015 (Case No. 2015-0065), and Relator's "Original Action in Mandamus and Prohibition for Relief" filed January 15, 2015 (Case No. 2015-0074). All of these cases stem from Hamilton County Juvenile Court Case No. F062497 (the "Juvenile Court Proceedings"), which is the dependency case concerning Relator's child.

In addition to the cases filed in this Court, Relator has persistently filed other civil lawsuits in both federal and state courts, a vast majority of which stem from the Juvenile Court Proceedings. Richard J. Schneider is an assistant prosecutor in Hamilton County, Ohio and one of the attorneys who has represented HCJFS in these proceedings. Mr. Schneider's attached affidavit outlines previously filed frivolous actions, all of which share a common denominator: to thwart or otherwise obstruct the litigation regarding custody of her child in the Hamilton County Juvenile Court ("Juvenile Court"), an action in which she is fully participatory. (*See* Affidavit of Richard J. Schneider, Exhibit A, attached hereto and incorporated herein by reference).

On December 9, 2014 a pretrial hearing was held in the Juvenile Court Proceedings, which resulted in the that court's issuance of an entry dated December 10, 2014 (*See* Juvenile Court 12/10/14 Entry, Exhibit B, attached hereto and incorporated herein by reference). On December 15, 2014, Relator filed two appeals in the First District Court of Appeals regarding the

Juvenile Court's December 10, 2014 entry (*See* 12/15/14 Notice of Appeals, Exhibit C, attached hereto and incorporated herein by reference). On January 7, 2015 the First District Court of Appeals granted HCJFS' motion to dismiss Relator's appeals for lack of a final appealable order, and directed the Juvenile Court to proceed on the underlying Juvenile Court Proceedings (*See* 1/07/15 Entry Granting Motion to Dismiss, Exhibit D, attached hereto and incorporated herein by reference). In direct response to the First District, the Juvenile Court held a pretrial in the Juvenile Court Proceedings on January 12, 2015. An entry from the January 12, 2015 pretrial indicates that Relator's emergency motion for custody will be considered along with other petitions and motions at the scheduled trial February 17, 2015 (*See* 1/12/2015 Entry, Exhibit E, attached hereto and incorporated herein by reference).

In this case, Relator apparently seeks an order from this Court compelling discovery of information related to the Juvenile Court Proceedings, including but not limited to various illustrations of probable cause related to the Juvenile Court Proceedings (*See* Relator's Petition).

B. Statement of Facts

Relator has been involved with custody proceedings regarding her child in Hamilton County's Juvenile Court since the child was born in 2006. In June, 2013 HCJFS filed a complaint alleging Relator's child was a dependent child. Based on these proceedings, the Juvenile Court granted interim custody to HCJFS. Later, the Juvenile Court adjudicated the child dependent and placed him in the Temporary Custody of HCJFS. In February, 2014, Relator's child was placed in the home of Relator's sister, where he remains to this date. The sister has since filed a petition for legal custody of Relator's child, which is currently pending before the Juvenile Court and will be addressed along with Relator's petition for custody at the February, 2015 trial in Juvenile Court.

II. ARGUMENT

Although it is unclear what relief Relator is specifically seeking, for the sake of argument Respondents will address the Petition as though Relator is seeking a writ of mandamus, or alternatively, a writ a habeas corpus. Should Relator's Petition be treated as a writ of mandamus, it should be dismissed because an adequate remedy at law exists in the ongoing proceedings currently occurring in Juvenile Court. Alternatively, if the Court chooses to treat Relator's Petition as a writ of habeas corpus on behalf of Relator's son, it should be also dismissed because an adequate remedy at law exists in those same ongoing Juvenile Court proceedings, and because Relator's child's liberty was not restrained unlawfully.

A. Writ of Mandamus

If this Court is to treat Relator's Petition as a writ of mandamus, it should be dismissed because an adequate remedy at law exists in the ongoing Juvenile Court Proceedings in Hamilton County. "A relator seeking a writ of mandamus must establish (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent official or governmental unit to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Manley v. Walsh*, 2014-Ohio-4563, ¶ 18, 2014 WL 5369335, *3 (quoting *State ex rel. Waters v. Spaeth,* 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6). "The relator must prove entitlement to the writ by clear and convincing evidence." *Id*. (quoting *State ex rel. Cleveland Right to Life v. State Controlling Bd.,* 138 Ohio St.3d 57, 2013-Ohio-5632, 3 N.E.3d 185, ¶ 2).

Relator asks this Court to compel discovery in an ongoing custody action in the Juvenile Court, an action in which she is an active participant. Specifically, Relator asks this Court to order HCJFS to provide evidence related to custody of her son, and the legal and factual basis for the institution of the Juvenile Court Proceedings. Under R.C. 2731.03, a writ of mandamus may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its

functions, but it cannot control judicial discretion. Here, Relator is attempting to have this Court control the discovery process in the Juvenile Court Proceedings. This is a discretionary action for which mandamus is not appropriate.

Further, a custody determination is pending in Hamilton County Juvenile Court Case No. F06297. The matter is set for trial on February 17, 2015 (See Juvenile Court 12/10/14 Entry, Exhibit B). The prosecution of the legal proceedings in the form of the upcoming trial is an adequate remedy at law as a matter of law. See R.C. 2731.05 (writ of mandamus must not be issued when there is a plain and adequate remedy in the ordinary course of the law). Relator has and continues to have ample opportunity to conduct discovery in the Juvenile Court Proceedings. Nothing is preventing Relator from seeking discovery in the ongoing Juvenile Court proceedings. This Court's intervention is not only unnecessary, HCJFS asserts that there is no legal basis on which Relator can assert an extraordinary writ to accomplish the securing of such discovery. An adequate remedy at law exists for Relator in the ongoing Juvenile Court proceedings below, and Relator's Petition must be dismissed.

B. Writ of Habeas Corpus

If Relator's Petition is treated as a writ of habeas corpus, it must also be dismissed because Relator's child's liberty has not been restrained unlawfully, and because an adequate remedy at law exists in the ongoing Juvenile Court proceedings as set forth above. A writ of habeas corpus is appropriate in extraordinary circumstances where there is an unlawful restraint of a person's liberty and there is no adequate remedy in the ordinary course of law. *Holloway v. Clermont County Dept. of Human Services*, 80 Ohio St. 3d 128, 130, 684 N.E.2d 1217, 1218 (1997) (citing *Howard v. Catholic Social Serv. of Cuyahoga County, Inc.*, 70 Ohio St. 3d 141, 144, 637 N.E.2d 890, 893 (1994).

On May 8, 2014, the Juvenile Court held a dispositional hearing where clear and

convincing evidence established that Relator's child was adjudicated to be a dependent child on October 1, 2013, and that granting temporary custody of Relator's child to HCJFS was in the child's best interest. (*See* 5/08/2015 Entry, Exhibit F, attached hereto and incorporated herein by reference). This Entry demonstrates that Relator's child's liberty was not restrained unlawfully. The child was placed in the temporary custody of HCJFS after the Juvenile Court weighed the evidence and witness testimony presented at trial. Because Relator's child was not detained unlawfully, the Petition must be denied.

In *Holloway*, the relator's petition for a writ of habeas corpus was denied, in part, because permanent custody proceedings were pending in the juvenile court at the time of the petition. *Id.* at 132. Here, as in *Holloway*, Relator has arguably sought habeas corpus relief despite a pending custody trial in the Juvenile Court. Relator has consistently been an active participant in the Juvenile Court proceedings as is evidenced by Exhibit. A. In fact Relator has been permitted by Juvenile Court to participate via telephone in order to assure that she has access to the legal proceedings. Nothing now prevents Relator from attending and participating in the February 17, 2015 trial. An adequate remedy at law exists for Relator in the pending Juvenile Court Proceedings, and therefore her Petition must be denied.

III. CONCLUSION

Relator's Petition must be dismissed because Relator has an adequate remedy at law in the Hamilton County Juvenile Court proceedings below, and because Relator's child's liberty was not restrained unlawfully.

Respectfully submitted,

JOSEPH T. DETERS,
HAMILTON COUNTY PROSECUTOR

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been sent to Pauletta Higgins at P.O. Box 3063, Orlando, Florida 32801 and 5245 Cinderlane Parkway, Apt. 383, Orlando, FL 32801 by regular U.S. Mail this 4th day of February, 2015.

_/s/ Pamela J. Sears_____
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