

[Cite as *In re T.F.*, 2009-Ohio-4840.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In re:	:	No. 09AP-199
[T.F.	:	(C.P.C. No. 06JU-11141)
Z.K.	:	No. 09AP-200
S.K.	:	(C.P.C. No. 06JU-11137)
T.F.,	:	No. 09AP-201
	:	(C.P.C. No. 06JU-11138)
Petitioner].	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on September 10, 2009

T.F., pro se.

Tyack, Blackmore & Liston Co., L.P.A., and Jefferson E. Liston, for respondent T.K.

IN HABEAS CORPUS

BROWN, J.

{¶1} Petitioner, T.F., has filed these original actions seeking writs of habeas corpus in an effort to secure the release of her children from the custody of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

{¶2} This matter was referred to a magistrate of this court, pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. The magistrate issued a decision, including findings of fact and conclusions of law which is appended to this

decision, and recommended that this court grant the motion to dismiss filed by T.K., respondent, and dismiss petitioner's complaints for writs of habeas corpus. No objections have been filed to that decision.

{¶3} As there have been no objections filed to the magistrate's decision, and it contains no error of law or other defect on its face, based upon an independent review of the evidence, this court adopts the magistrate's decision. Respondent's motion to dismiss is granted and petitioner's requests for writs of habeas corpus are dismissed.

*Motion to dismiss granted;
Actions dismissed.*

FRENCH, P.J., and SADLER, J., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

[In the Matter of: :
T.F. : Nos. 09AP-199
Z.K. : 09AP-200
S.K. : and 09AP-201
T.F., : (REGULAR CALENDAR)
Petitioner, :
T.K., :
Respondent.] :

MAGISTRATE'S DECISION

Rendered on May 15, 2009

T.F., pro se.

Tyack, Blackmore & Liston Co., L.P.A., and *Jefferson E. Liston*, for respondent T.K.

IN HABEAS CORPUS ON MOTION TO DISMISS

{¶4} Petitioner, T.F., has filed these original actions seeking writs of habeas corpus in an effort to secure the release of her children from the custody of Franklin County Children Services following the resolution of a custody determination in the

Franklin County Court of Common Pleas, Domestic Relations Division, Juvenile Branch ("common pleas court").

Findings of Fact:

{¶5} 1. On February 26, 2009, petitioner filed the instant habeas corpus actions. In her complaint, petitioner indicates that her children have been wrongfully removed from her custody.

{¶6} 2. Petitioner has not included any documents from the trial court.

{¶7} 3. Petitioner's complaint appears to indicate that a custody hearing occurred in the common pleas court and, as a result, petitioner lost custody of her children.

{¶8} 4. Petitioner indicates that she had more than one attorney representing her in the custody actions. It appears that one or more attorneys resigned from representation.

{¶9} 5. Petitioner indicates that she has requested that an "appeals attorney" be appointed to protect her rights as well as the rights of her children.

{¶10} 6. On April 6, 2009, respondent, T.K., filed a motion to dismiss petitioner's complaint.

{¶11} 7. Petitioner has not filed a memorandum contra to the motion to dismiss.

{¶12} 8. The matter is currently before the magistrate on respondent's motion to dismiss.

Conclusions of Law:

{¶13} For the reasons that follow, it is this magistrate's decision that the motion should be granted and petitioner's actions should be dismissed.

{¶14} A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.* (1992), 65 Ohio St.3d 545. In reviewing the complaint, the court must take all the material allegations as admitted and construe all reasonable inferences in favor of the nonmoving party. *Id.*

{¶15} In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint that the petitioner can prove no set of facts entitling him/her to recovery. *O'Brien v. University Community Tenants Union* (1975), 42 Ohio St.2d 242. As such, a complaint for writ of habeas corpus is not subject to dismissal under Civ.R. 12(B)(6) if the complaint alleges the existence of a legal duty by the respondent and the lack of an adequate remedy at law for petitioner with sufficient particularity to put the respondent on notice of the substance of the claim being asserted against it, and it appears that the petitioner might prove some set of facts entitling him/her to relief. *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn.* (1995), 72 Ohio St.3d 94. For the following reasons, respondent's motion should be granted and petitioner's complaint should be dismissed.

{¶16} Dismissal of an action for failure to state a claim upon which relief can be granted is appropriate if, after all factual allegations are presumed true and all reasonable inferences are made in petitioner's favor, it appears beyond doubt that she could prove no set of facts entitling her to the requested extraordinary relief in habeas corpus. *Keith v. Bobby*, 117 Ohio St.3d 470, 2008-Ohio-1443; *Goudlock v. Voorhies*, 119 Ohio St.3d 398, 2008-Ohio-4787.

{¶17} The Supreme Court of Ohio has held that habeas corpus relief is not available when there is an adequate remedy in the ordinary course of law. *In re Complaint for Writ of Habeas Corpus for Goeller*, 103 Ohio St.3d 427, 2004-Ohio-5579. Franklin County Children Services argues that the issues raised herein are ones which could have and should have been raised on appeal; therefore, petitioner has or had an adequate remedy at law which bars the issuance.

{¶18} As stated previously, petitioner is challenging a custody determination. Petitioner could have filed an appeal from the common pleas court's final determination regarding custody. Because petitioner had an adequate remedy at law, the complaint should be dismissed.

{¶19} Further, R.C. 2725.04(D) requires that a copy of the commitment or cause of detention be exhibited with the complaint. As noted earlier, petitioner has not attached any of the common pleas court's underlying documentation. The Supreme Court of Ohio has made it clear that, when a habeas corpus petition does not comply with R.C. 2725.04(D), the petition is fatally defective and must be dismissed. *Bloss v. Rogers* (1992), 65 Ohio St.3d 145.

{¶20} Because petitioner's complaint is fatally defective, and petitioner has or had an adequate remedy at law by way of appeal, it is this magistrate's decision that respondent's motion to dismiss should be granted and petitioner's complaints for writs of habeas corpus should be dismissed.

/s/ Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).