

[Cite as *In re State ex rel. Anspach*, 2008-Ohio-3859.]

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

IN RE: STATE OF OHIO, EX REL., STEPHEN MICHAEL ANSPACH

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Appellate Case No. 22599

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DECISION AND FINAL JUDGMENT ENTRY

Rendered on the 1st day of July, 2008.

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PER CURIAM:

{¶1} This matter is before the Court on Stephen Michael Anspach's response to our order to show cause why his petition for a writ of prohibition, filed January 25, 2008, should not be dismissed. For the following reasons, we dismiss Anspach's petition for a writ of prohibition.

{¶2} According to the petition, Anspach was convicted of a sexual offense in the State of Wisconsin in 1995. Anspach resides in Montgomery County, and he has been reporting in Montgomery County as a sexually oriented offender. Anspach states that he has been informed that he has been reclassified as a Tier II sex offender under the new sex offender classification scheme, which was enacted in Senate Bill 10, effective January 1, 2008. As a result of his reclassification, Anspach is now required

to report for 25 years. Anspach asserts that (1) R.C. Chapter 2950, as amended by S.B. 10, is unconstitutional; (2) the Montgomery County Sheriff should therefore remove him from the new burdens that the amendments impose upon him; and (3) the Sheriff should be prohibited from registering Anspach and issuing community notification. Anspach requests a writ prohibiting the Montgomery County Sheriff from continuing to require his registration “beyond the date set for the termination of this registration.”

{13} On February 11, 2008, we issued an order requiring Anspach to show cause why his petition for a writ of prohibition should not be dismissed for failure to state a claim for extraordinary relief in prohibition. In our order, we identified several potentially fatal defects in his petition. First, we stated that his petition did not appear to establish that the Montgomery County Sheriff was about to exercise judicial or quasi-judicial power that is unauthorized by law. We noted that the Attorney General, not the Sheriff, determines an offender’s new classification as a tier I, tier II, or tier III sex offender. We also indicated that the petition did not assert that the Sheriff was subjecting him to community notification requirements or determining Anspach’s reporting period. In addition, we stated that it appeared that Anspach had an adequate remedy at law by means of a declaratory judgment action.

{14} Anspach responded to the show cause order on March 3, 2008. He asserted that the Sheriff was a proper respondent, because his duties are “a part of the exercise of judicial or quasi-judicial power.” However, Anspach further requested leave to amend his petition to include the Attorney General. Anspach further stated that the reclassification was not authorized under the current law because his registration requirements were established by the prior version of R.C. Chapter 2950.

Finally, Anspach claimed that a declaratory judgment action would not provide an adequate remedy at law, because a declaratory judgment action would “follow the time periods of the Civil Rules.” Anspach implies that the length of time to complete a declaratory judgment action would be inadequate to protect his rights. Anspach’s arguments are unavailing.

{¶5} “Prohibition is an extraordinary remedy which is customarily granted with caution and restraint, and is issued only in cases of necessity arising from the inadequacy of other remedies.” *State ex rel. Henry v. Britt* (1981), 67 Ohio St.2d 71, 73, 424 N.E.2d 297. To be entitled to a writ of prohibition, the petitioner must establish that: (1) the respondent is about to exercise judicial or quasi-judicial power; (2) the exercise of that power is unauthorized by law; and (3) denial of the writ will cause injury for which no other adequate remedy in the ordinary course of law exists. See *State ex rel. Columbus S. Power Co. v. Fais*, 117 Ohio St.3d 340, 2008-Ohio-849, 884 N.E.2d 1, at ¶15.

{¶6} First, we find no indication that either the Sheriff or the Attorney General is exercising judicial or quasi-judicial power with respect to reclassification. As we indicated in our show cause order, judicial or quasi-judicial power is “any power to hear and determine controversies that require a hearing resembling a judicial trial.” See *State ex rel. Bruggeman v. Ingraham*, 87 Ohio St.3d 230, 231, 1999-Ohio-27, 718 N.E.2d 1285. The Sheriff’s responsibilities under S.B. 10 do not include reclassification or determining Anspach’s reporting requirements. Although R.C. Chapter 2950 vests the Attorney General with the responsibility to reclassify an offender under tier I, tier II, or tier III, an offender’s tier is determined by the offense of which the offender has been convicted. R.C. 2950.01. Reclassification does not

require a weighing of factors or an individualized assessment. Thus, even if the Attorney General were named a respondent, the Attorney General's reclassification is an administrative act, not an adjudicative one.

{17} Secondly, we reject Anspach's assertion that he lacks an adequate remedy at law. An alternative remedy is adequate if it is complete, beneficial, and speedy. *State ex rel. Beane v. City of Dayton*, 112 Ohio St.3d 553, 558, 2007-Ohio-811, 862 N.E.2d 97. Here, Anspach has an adequate remedy at law by an action for declaratory judgment and a prohibitory injunction in the common pleas court. "Constitutional challenges to legislation are generally resolved in an action in common pleas court rather than in an extraordinary writ action." *State ex rel. Scott v. City of Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, ¶22. Although any civil action requires some period of time to resolve, a declaratory judgment action is proper in cases where a speedy resolution "is necessary to preserve rights that may otherwise be impaired or lost." *Freedom Road Foundation v. Ohio Dept. of Liquor Control* (1997), 80 Ohio St.3d 202, 204, 685 N.E.2d 522. We do not find that the time requirements set forth by the Civil Rules render a declaratory judgment action inadequate in this case.

{18} Upon review, Anspach has failed to state a claim for extraordinary relief in prohibition. Because Anspach cannot prevail on his request for extraordinary relief, the petition for a writ of prohibition is hereby DISMISSED.

SO ORDERED.

WILLIAM H. WOLFF, JR., Presiding Judge

JAMES A. BROGAN, Judge

MIKE FAIN, Judge

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TO THE CLERK: Pursuant to Civil Rule 58(B), please serve on all parties not in default for failure to appear notice of judgment and its date of entry upon the journal.

WILLIAM H. WOLFF, JR., Presiding Judge

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