

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio, ex rel.
Victoria K. Beltowski

Court of Appeals No. S-13-001

Relator

v.

Bradley J. Smith, Judge and
Sara Jo Sherick, Magistrate and
Sandusky County Juvenile Court

DECISION AND JUDGMENT

Respondents

Decided: March 6, 2013

* * * * *

John J. Schneider, for relator.

Thomas L. Stierwalt, Sandusky County Prosecuting Attorney, and
Norman P. Solze, Assistant Prosecuting Attorney, for respondents.

* * * * *

SINGER, P.J.

{¶ 1} This matter is before the court on the petition of relator, Victoria K. Beltowski, who requests that this court issue a writ of prohibition to respondents, Sandusky County Common Pleas Judge J. Bradley Smith, Magistrate Sara Jo Sherick and

the Sandusky County Juvenile Court. Relator requests we order respondents to refrain from exercising jurisdiction with respect to custody matters involving relator's minor child.

{¶ 2} Relator states that she was designated residential and custodial parent of the minor child in a judgment issued by respondent court on December 18, 2009. According to relator, she has since relocated to Arizona. During the summer of 2012, however, she temporarily returned here. Relator states that, during her visit, she was called back to Arizona on business and left her child in the care of the child's maternal grandmother.

{¶ 3} Relator states that while she was in Arizona, the child's paternal grandfather filed an ex parte motion for custody of the child, which was granted by respondents. Relator insists that since she and the child are residents of Arizona, respondents are without jurisdiction to act.

{¶ 4} On January 23, 2013, this court issued an alternative writ, directing respondents to either refrain from exercising jurisdiction in the matter, show cause why the writ should not issue or move for dismissal. On February 5, respondents moved to dismiss pursuant to Civ.R. 12(B)(6), asserting that relator had failed to state a claim upon which relief may be granted. On March 1, 2013, relator filed a response.

{¶ 5} A writ of prohibition "is an extraordinary writ, the purpose of which is to challenge the jurisdiction of a court to act." *State ex rel. News Herald v. Ottawa Cty. Court of Common Pleas, Juv. Div.*, 76 Ohio St.3d 1203, 1203, 667 N.E.2d 404 (1996).

The writ will be issued only if a petitioner can prove: "(1) that the court or officer against

whom it is sought is about to exercise judicial or quasi-judicial power, (2) that the exercise of such power is unauthorized by law, and (3) that the refusal of the writ will result in injury for which no other adequate remedy exists.” *State ex rel. Starnes v. DeHoff*, 18 Ohio St.3d 163, 164, 480 N.E.2d 449 (1985).

{¶ 6} Both Ohio and Arizona have adopted the Uniform Child Custody Jurisdiction and Enforcement Act. R.C. 3127.01 et seq., Ariz.Rev.Stat. 25-1001 et seq. Part of the act, R.C. 3127.16, provides that when an Ohio court has made a child custody determination, that court has “exclusive, continuing jurisdiction over the determination until the court or a court of another state determines that the child, the child’s parents, and any person acting as a parent do not presently reside in this state.”

{¶ 7} R.C. 3127.18(C) also grants temporary emergency jurisdiction to an Ohio court if the child is present in this state and there has been a prior child custody determination that is entitled to be enforced under R.C. Chapter 3127. Emergency orders under this section are temporary and should specify the amount of time the court deems adequate to obtain an order from another state. If a court is informed of the commencement of custody proceedings in another state, the Ohio court is directed to communicate with the other court “to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.” R.C. 3127.18(D)

{¶ 8} Respondents point to relator’s own affidavit in which she states that respondent issued a 2009 judgment designating relator the custodial parent. Indeed

relator has attached a copy of this decision to her response. Respondents also state that relator has failed to establish that any alternative custody proceeding has been commenced in Arizona. Relator responds with documentation showing that she filed a copy of the 2009 judgment as a foreign judgment in Arizona and a copy of what appears to be a petition in an Arizona court for habeas corpus.

{¶ 9} Relator has failed to demonstrate respondent is about to exercise judicial power that is unauthorized by law. Indeed, it appears that the court is properly exercising jurisdiction either as the court issuing the original custody order or under emergency authority for a minor child found in this state. Moreover, if relator is dissatisfied with the result of respondents' exercise of judicial power, she has an adequate remedy at law through appeal. Accordingly, relator has failed to state a cause upon which relief may be granted. Respondents' motion to dismiss, pursuant to Civ.R. 12(B)(6), is well-taken. Costs to relator.

{¶ 10} To the clerk: Manner of service.

{¶ 11} Serve upon all parties in a manner prescribed by Civ.R. 5(B) notice of the judgment and its date of entry upon the journal.

Petition dismissed.

State ex rel. Beltowski
v. Smith
C.A. No. S-13-001

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.