

SUPREME COURT OF OHIO

State ex rel. Nalls v. Russo

96 Ohio St. 3d 410 (Ohio 2002) · Decided October 2, 2002

SUMMARY

The Ohio Supreme Court affirmed the denial of writs of prohibition, mandamus, and procedendo sought by Nichole Nalls in a juvenile abuse and dependency proceeding. The court held that the juvenile judge and magistrate had basic jurisdiction, that any alleged defects in the order of reference or magistrate’s decision were not jurisdictional, and that adequate remedies existed through objections and appeal. The court also found no undue delay warranting procedendo.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Moyer, C.J.; Douglas; Resnick; F.E. Sweeney; Pfeifer; Cook; Lundberg Stratton
JURISDICTION	Ohio
DECIDED	October 2, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal as of right from a judgment of the Cuyahoga County Court of Appeals granting appellees' motion for summary judgment and denying writs of prohibition, mandamus, and procedendo.
STANDARD OF REVIEW	Extraordinary writ relief requires the relator to establish the applicable legal entitlement and the absence of an adequate remedy in the ordinary course of law. Prohibition requires a patent and unambiguous lack of jurisdiction; mandamus and procedendo are unavailable when an adequate legal remedy exists.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; precedential
PARTIES	Nichole D. Nalls v. Joseph F. Russo, Mark R. Majer, Peter M. Sikora

TOPICS

- writ of certiorari
- appellate procedure
- civil procedure
- standard of review
- subject matter jurisdiction

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the juvenile court judge and magistrate patently and unambiguously lacked jurisdiction because the magistrate's authority was based on a general order of reference rather than a case-specific order.
2. Whether the failure to file a separate magistrate's decision under Juv.R. 40(E)(1) created a jurisdictional defect warranting prohibition.
3. Whether mandamus could compel the juvenile court clerk to strike the challenged entry from the records.
4. Whether procedendo could compel the magistrate to issue a separate decision and the clerk to serve it on the parties.

HOLDINGS

1. A general, journalized order of reference authorizing a magistrate to hear and recommend dispositions in cases assigned by the juvenile court is sufficient under Juv.R. 40; the rule does not require a more specific case-by-case journalized order.
2. Any failure to file a separate magistrate's decision under Juv.R. 40(E)(1) was, at most, an error subject to correction by objections and appeal, not a patent and unambiguous loss of jurisdiction supporting prohibition.
3. Prohibition will not issue as a substitute for appeal to review mere errors in judgment when the respondent court has basic subject-matter jurisdiction and the relator has an adequate legal remedy.
4. Mandamus was unavailable because Nalls had adequate remedies through timely objections and appeal and therefore could not establish the absence of an adequate remedy at law.
5. Procedendo was unavailable because Nalls had an adequate legal remedy and had not shown undue delay warranting extraordinary relief.

KEY QUOTATIONS

“Prohibition will not issue as a substitute for appeal to review mere errors in judgment.” (at 414)

FACTUAL BACKGROUND

The Cuyahoga County Department of Children and Family Services removed Darin Nalls from his mother's home after another child died while in the mother's custody. The agency filed an abuse and dependency complaint seeking legal custody for Darin's father. A juvenile court judge and magistrate jointly signed an entry adjudicating Darin dependent, and the mother challenged the magistrate's authority and the form of the entry through extraordinary-writ proceedings.

PROCEDURAL HISTORY

The Cuyahoga County Department of Children and Family Services filed an abuse and dependency complaint in the juvenile division of the Cuyahoga County Court of Common Pleas. After a jointly signed entry adjudicated

the child dependent, Nalls sought extraordinary writs in the court of appeals, arguing that the juvenile judge and magistrate lacked jurisdiction and that the clerk should strike the entry or issue a separate magistrate's decision. The court of appeals granted summary judgment for appellees and denied the writs; the Supreme Court of Ohio affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Cleveland Elec. Illum. Co. v. Cuyahoga Cty. Court of Common Pleas, 88 Ohio St. 3d 447, 727 N.E.2d 900 (2000)
- White v. White, 50 Ohio App. 2d 263, 362 N.E.2d 1013 (1977)
- Ordway v. Ordway (Dec. 30, 1998), Wayne App. No. 97CA006947, 1999 WL 1789
- In re Morales (Apr. 12, 2001), Cuyahoga App. No. 78271, 2001 WL 370637
- Davis v. Reed (Aug. 31, 2000), Cuyahoga App. No. 76712, 2000 WL 1231462
- State ex rel. Banc One Corp. v. Walker, 86 Ohio St. 3d 169, 172, 712 N.E.2d 742 (1999)
- In re Bortmas (Oct. 15, 1999), Trumbull App. No. 98-T-0147, 1999 WL 959842
- Swain v. Swain (Nov. 22, 2000), Summit App. No. 20048, 2000 WL 1729472
- State ex rel. Shimko v. McMonagle, 92 Ohio St. 3d 426, 751 N.E.2d 472 (2001)
- Brooks v. Gaul, 89 Ohio St. 3d 202, 729 N.E.2d 752 (2000)
- State ex rel. Gaydosh v. Twinsburg, 93 Ohio St. 3d 576, 757 N.E.2d 357 (2001)
- State ex rel. Dannaher v. Crawford, 78 Ohio St. 3d 391, 678 N.E.2d 549 (1997)
- State ex rel. Miley v. Parrott, 77 Ohio St. 3d 64, 671 N.E.2d 24 (1996)
- State ex rel. Luna v. Huffman, 74 Ohio St. 3d 486, 659 N.E.2d 1279 (1996)
- Erb v. Erb, 65 Ohio App. 3d 507, 584 N.E.2d 807 (1989)

OPINION

PER CURIAM.

Per Curiam. {¶ 1} On January 31, 2001, the Cuyahoga County Department of Children and Family Services (“CCDCFS”) removed Darin Nalls (“Darin”) from the home in which he was residing with his mother, appellant, Nichole D. Nalls (“Nalls”), after Nalls’s other child, Danielle, had died while in her custody.

On May 31, 2001, CCDCFS filed a complaint in the Cuyahoga County Court of Common Pleas, Juvenile Division, alleging that Darin was an abused and dependent child and requesting that the juvenile court grant legal custody of Darin to his father. {¶ 2} Under a June 25, 1999 entry titled, “Appointment of Magistrate and Order of Reference,” appellee Mark R. Majer was appointed magistrate: *411 {¶ 3} “Pursuant to Rule 40 of the Ohio Rules of Juvenile Procedure, Rule 53 of

the Ohio Rules of Civil Procedure, and Sections 2151.16 and 2153.08 of the Ohio Revised Code, IT IS ORDERED that MARK R. MAJER, Attorney at Law, is appointed as Magistrate of this Court and is empowered and authorized to hear and recommend dispositions on official cases assigned to him as the Court shall direct.

Said Magistrate has and shall exercise the power to regulate all proceedings in every hearing before him as if by the Court and to do all acts and to take all measures necessary and proper for the efficient administration of justice and the performance of his duties pursuant to this order.” {¶ 4} In accordance with this order of reference, any case that is assigned to appellee Judge Joseph F. Russo of the juvenile court in which temporary custody is sought by CCDCFS is referred to Magistrate Majer as a matter of course.

Consequently, Magistrate Majer was assigned to preside over the Nalls case. {¶ 5} On October 15, 2001, Judge Russo and Magistrate Majer both signed an entry adjudging Darin to be a dependent child and ordering disposition to be set in accordance with the juvenile court’s and the attorneys’ schedules.

The entry, which was journalized on October 22, 2001, contained the following introductory language: {¶ 6} “This matter came on for hearing this 3rd day of October, 2001, before the Honorable Joseph F. Russo, upon the Report of Magistrate Mark R. Majer. {¶ 7} “The case came before the court on a refiled complaint alleging abuse and neglect [sic, dependency] pursuant to 2151.031(D) and 2151.04(B) and (C). {¶ 8} “The Magistrate finds that notice requirements have been met and that all necessary parties were present this day in court. {¶ 9} “The complaint was read in open court. {¶ 10} “The Magistrate explained legal rights, including the possible effect on parental rights.

Mother and father have counsel. {¶ 11} “The Magistrate heard testimony and accepted evidence.” {¶ 12} The remainder of the entry contains a procedural history of the case and an analysis of the CCDCFS allegations of abuse and dependency and concludes with the adjudication that Darin is a dependent child. {¶ 13} On October 25, 2001, Nalls filed a complaint in the Court of Appeals for Cuyahoga County against appellees, Judge Russo, Magistrate Majer, and Judge Peter M. Sikora, the Ex Officio Clerk of the juvenile court.

In her complaint, as subsequently amended, Nalls prayed for a writ of prohibition to prevent Judge Russo and Magistrate Majer from exercising judicial power in the abuse and dependency proceeding and a writ of mandamus to compel Judge Sikora to strike the October 22, 2001 journal entry from the juvenile court records.

In the alternative, Nalls requested a writ of procedendo to compel *412Magistrate Majer to prepare, sign, and file his decision in the abuse and dependency case and to compel Judge Sikora to serve copies of the magistrate’s decision on all parties or their attorneys. Appellees filed a

motion for summary judgment. {¶ 14} On February 14, 2002, the court of appeals granted appellees' motion for summary judgment and denied the writs. {¶ 15} This cause is now before the court upon Nalls's appeal as of right. {¶ 16} In her appeal as of right, Nalls contends that the court erred in denying her request for writs of prohibition, mandamus, and procedendo.

For the reasons that follow, we affirm the judgment of the court of appeals. Prohibition {¶ 17} Nalls asserts that she is entitled to writs of prohibition against Judge Russo and Magistrate Majer because they lack jurisdiction over the underlying proceeding. Nalls claims that they lack jurisdiction because there was no proper order of reference of the case to the magistrate and the magistrate did not file a separate decision. {¶ 18} In the absence of a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging that jurisdiction has an adequate remedy by appeal.

State ex rel. Cleveland Elec. Illum. Co. v. Cuyahoga Cty. Court of Common Pleas (2000), 88 Ohio St.3d 447, 449-450, 727 N.E.2d 900. {¶ 19} Judge Russo has basic statutory jurisdiction over the underlying abuse and dependency proceeding pursuant to Section 4, Article IV of the Ohio Constitution and R.C. 2151.23(A)(1), and Magistrate Majer has basic jurisdiction over the proceeding under R.C.

2151.16 and Juv.R. 40. {¶ 20} Nalls initially contends that Judge Russo and Magistrate Majer lacked jurisdiction over the abuse and dependency proceeding because there was no proper order of reference for the magistrate to be authorized to act. See *White v. White* (1977), 50 Ohio App.2d 263, 266, 4 O.O.3d 225, 362 N.E.2d 1013; *Ordway v. Ordway* (Dec. 30, 1998), Wayne App.

No. 97CA006947, 1999 WL 1789. {¶ 21} As the Court of Appeals for Cuyahoga County recently observed, however, "Juv.R. 40 and Civ.R. 53 do not specify the form of the reference order nor do they require the court to journalize an individual order of reference for each issue submitted." In re *Morales* (Apr. 12, 2001), Cuyahoga App. No. 78271, 2001 WL 370637; see, also, *White* at 267, 362 N.E.2d 1013.

The language of Juv.R. 40 that is applicable here is discretionary rather than mandatory.¹ {¶ 22} Nalls, however, cites *Davis v. Reed* (Aug. 31, 2000), Cuyahoga App. No. 76712, 2000 WL 1231462, in support of her contention that an order of reference must be either (1) an individual journalized order of reference in a particular case or cases, (2) a blanket, journalized order of reference in a particular type or types of cases, or (3) a local rule or rules providing for automatic reference in certain types of cases.

See, also, *White*, 50 Ohio App.2d at 267, 4 O.O.3d 225, 362 N.E.2d 1013. But as *Davis* and *White* expressly acknowledge, this list of appropriate reference orders is nonexhaustive. *Davis* ("an order of reference may be made in one of at least three ways"). (Emphasis added.) {¶ 23} The June 25, 1999 entry here was titled in part an "Order of Reference," and expressly authorized Magistrate

Majer to “hear and recommend dispositions on official cases assigned to him as the Court shall direct.” The juvenile court directed Magistrate Majer to preside over the custody proceeding.

Juv.R. 40 does not manifestly require any more specific journalized order of reference in addition to the general one of June 25, 1999. {¶ 24} Moreover, the authorities Nalls cites to support her contention concerning no orders of reference, such as Davis, supra, 2000 WL 1231462, were decided by way of appeal rather than by extraordinary writ. See State ex rel.

Banc One Corp. v. Walker (1999), 86 Ohio St.3d 169, 172, 712 N.E.2d 742 (“Significantly, most of the authorities relied on by appellants were resolved by appeal rather than by extraordinary writ”). {¶ 25} Nalls next contends that Judge Russo and Magistrate Majer patently and unambiguously lack jurisdiction over the custody proceeding because the October 22, 2001 entry did not constitute a separate magistrate’s decision, as required by Juv.R.

40(E)(1), which provides that “[t]he magistrate shall then prepare, sign, and file a magistrate’s decision of the referred matter with the clerk, who shall serve copies on all parties or their attorneys.” {¶ 26} None of the cases cited by Nalls, however, holds that any error in this regard constitutes a jurisdictional defect, and in those cases, comparable claims were resolved on appeal rather than by extraordinary writ.

See, e.g., In re *414Bortmas (Oct. 15, 1999), Trumbull App. No. 98-T-0147, 1999 WL 959842; Swain v. Swain (Nov. 22, 2000), Summit App. No. 20048, 2000 WL 1729472. {¶ 27} In fact, if the jointly signed October 22, 2001 entry is considered to be, as appellees assert, Judge Russo’s immediate adoption of Magistrate Majer’s report under Juv.R. 40(E)(4)(c), Nalls could have filed objections to assert this claim.

Consequently, she was not necessarily prejudiced by the alleged absence of a single, separate magistrate’s decision because she was still able to file objections to the entry. Cf. Swain, citing Erb v. Erb (1989), 65 Ohio App.3d 507, 510, 584 N.E.2d 807 (“An appellate court will reverse the judgment of a trial court that failed to comply with Civ.R. 53[E][1][2] if the failure prejudiced the appellant”). {¶ 28} Therefore, Nalls failed to establish that despite their basic jurisdiction over the abuse and dependency proceeding, Judge Russo and Magistrate Majer were patently and unambiguously divested of that jurisdiction.

See State ex rel. Shimko v. McMonagle (2001), 92 Ohio St.3d 426, 430, 751 N.E.2d 472. Prohibition will not issue as a substitute for appeal to review mere errors in judgment. Brooks v. Gaul (2000), 89 Ohio St.3d 202, 203, 729 N.E.2d 752.

The court of appeals properly denied the writs of prohibition. Mandamus {¶ 29} Nalls asserts that Judge Sikora, in his capacity as Ex Officio Clerk of the juvenile court, had a duty to strike the October 22, 2001 entry because it is void due to a patent and unambiguous lack of jurisdiction on

the part of Judge Russo and Magistrate Majer. {¶ 30} As previously discussed, Nalls has or had adequate remedies at law by way of timely objections and an appeal to raise her claims.

The presence of these remedies precludes extraordinary relief in mandamus. *State ex rel. Gaydosh v. Twinsburg* (2001), 93 Ohio St.3d 576, 578, 757 N.E.2d 357; *State ex rel. Dannaher v. Crawford* (1997), 78 Ohio St.3d 391, 393, 678 N.E.2d 549; R.C. 2731.05. *Procedendo* {¶ 31} Nalls finally claims that if she is not entitled to the requested writs of prohibition and mandamus, she is alternatively entitled to a writ of *procedendo* to compel the magistrate to issue a separate decision pursuant to Juv.R.

40(E)(1). But as previously noted, Nalls has an adequate legal remedy to raise these issues. *State ex rel. Miley v. Parrott* (1996), 77 Ohio St.3d 64, 65, 671 N.E.2d 24 (relator must establish the lack of an adequate remedy in the ordinary course of law in order to be entitled to a writ of *procedendo*). And neither *procedendo* nor mandamus will generally issue to compel a court to release its decisions promptly. *415See *State ex rel.*

Luna v. Huffman (1996), 74 Ohio St.3d 486, 488, 659 N.E.2d 1279, and cases cited therein. Nalls filed her action for extraordinary relief in the court of appeals only three days after the October 22, 2001 entry she challenges. There was no undue delay cognizable in *procedendo*. Lester S. Potash, for appellant. William D. Mason, Cuyahoga County Prosecuting Attorney, and Charles E. Hannan, Assistant Prosecuting Attorney, for appellees.

Conclusion {¶ 32} Based on the foregoing, the court of appeals properly denied the writs of prohibition, mandamus, and *procedendo*. We affirm the judgment of the court of appeals. Judgment affirmed. Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.. {¶ a} Juv.R. 40(C) provides: *413{¶ b} “(1) Order of reference. {He} “* * * {¶ d} “(b) An order of reference may be specific to a particular case or proceeding or may refer categories of motions, eases, or proceedings. {¶ e} “(c) The order of reference to a magistrate may do all of the following: {¶ f} “(i) Specify the magistrate’s powers; {¶ g} “(ii) Direct the magistrate to report only upon particular issues, perform particular acts, or receive and report evidence only; {¶ h} “(iii) Fix the time and place for beginning and closing the hearings and for the filing of the magistrate’s decision or order.” (Emphasis added.).

Civ.R. 53(E)(1) contains language identical to Juv.R. 40(E)(1).