

OHIO COURT OF APPEALS, SIXTH APPELLATE DISTRICT

Patituce v. Hein

2026-Ohio-684 · No. F-25-011 · Decided February 27, 2026

SUMMARY

The Sixth District Court of Appeals granted Joseph Patituce a writ of prohibition against Judge Jonathan P. Hein. The court held that the trial court patently and unambiguously lacked jurisdiction to proceed with the criminal case while the direct appeal involving the same matter was pending.

CASE DETAILS

COURT	Ohio Court of Appeals, Sixth Appellate District
WRITING FOR THE COURT	Christine E. Mayle; Gene A. Zmuda; Myron C. Duhart
JURISDICTION	Ohio Court of Appeals, Sixth Appellate District
DECIDED	February 27, 2026
DOCKET	F-25-011
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Relator sought an emergency writ of prohibition preventing a common pleas court judge from proceeding with a criminal case while the criminal defendant's direct appeal was pending. The court issued an alternative writ, but the respondent did not respond.
STANDARD OF REVIEW	To obtain a writ of prohibition, the relator must establish that the respondent is about to exercise judicial or quasi-judicial power, the exercise is unauthorized by law, and denial of the writ would cause injury for which no adequate remedy exists in the ordinary course of law. If the respondent patently and unambiguously lacks jurisdiction, the relator need not establish the absence of an adequate remedy.
PRECEDENTIAL VALUE	Published
PARTIES	Joseph Patituce, relator v. Judge Jonathan P. Hein, respondent

TOPICS

- writ of certiorari
- appellate jurisdiction
- appellate procedure
- criminal procedure
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a writ of prohibition was appropriate to prevent the common pleas court judge from proceeding with the underlying criminal case while the direct appeal was pending.
2. Whether the trial court retained jurisdiction to hold a hearing on motions addressing the subject of the pending appeal.

HOLDINGS

1. A relator is entitled to a writ of prohibition when the respondent is about to exercise judicial or quasi-judicial power, the exercise is unauthorized by law, and denial of the writ would cause injury for which no adequate remedy exists in the ordinary course of law; no adequate-remedy showing is required when the respondent patently and unambiguously lacks jurisdiction.
2. Once an appeal has been filed, the trial court loses jurisdiction over the case except to take actions in aid of the appeal; holding a hearing on pending motions addressing the subject of the appeal is not an action in aid of the appeal.

KEY QUOTATIONS

“The purpose of a writ of prohibition is to restrain inferior courts from exceeding their jurisdiction.” (§ 2)

“Once an appeal has been filed, the trial court loses jurisdiction over a case except to take action in aid of the appeal.” (§ 3)

FACTUAL BACKGROUND

A criminal action against Baylor Barnum was pending in the Fulton County Court of Common Pleas while Barnum's direct appeal was pending. Judge Jonathan Hein appeared to be attempting to hold a hearing concerning an issue involved in that appeal. Joseph Patituce, identified as Barnum's counsel, sought to prevent the judge from proceeding.

PROCEDURAL HISTORY

On November 20, 2025, Joseph Patituce filed a complaint seeking a writ of prohibition against Judge Jonathan Hein. On January 5, 2026, the court issued an alternative writ requiring the respondent either to refrain from proceeding with the underlying criminal case during the direct appeal or to answer or move to dismiss; the respondent did not respond. The appellate court then granted a peremptory writ.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

Judge Hein is prohibited from proceeding with Barnum's criminal case, case No. 23 CR 000043, until Barnum's direct appeal, case No. F-25-010, is resolved. The sheriff of Darke County must immediately personally serve the respondent with the peremptory writ, and the clerk must serve all other parties under Civ.R. 5(B).

CASES CITED

- State ex rel. Kerr v. Kelsey, 2019-Ohio-3215, ¶ 5 (6th Dist.)
- State ex rel. Jones v. Suster, 84 Ohio St.3d 70, 73 (1998)
- State ex rel. Henry v. McMonagle, 87 Ohio St.3d 543, 544 (2000)
- State ex rel. Davis v. Kennedy, 2023-Ohio-1593, ¶ 10
- In re S.J., 2005-Ohio-3215, ¶ 9
- Yee v. Erie Cty. Sheriff's Dept., 51 Ohio St.3d 43, 44 (1990)

OPINION

Patituce v. Hein

2026 Ohio 684

PER CURIAM.

[Cite as Patituce v. Hein, 2026-Ohio-684.]

IN THE COURT OF APPEALS OF OHIO

SIXTH APPELLATE DISTRICT

FULTON COUNTY

Joseph Patituce Court of Appeals No. F-25-011 Relator v. Judge Jonathan P. Hein DECISION
AND JUDGMENT Respondent Decided: February 27, 2026 *****

MAYLE, J.,

{¶ 1} This case is before the court on the November 20, 2025 complaint for an emergency writ of prohibition filed by relator, Joseph Patituce. Patituce alleges that respondent, Judge Jonathan Hein, lacks jurisdiction to proceed with a criminal action pending against Patituce's client, Baylor Barnum, in the Fulton County Court of Common Pleas. He seeks a writ of prohibition preventing Judge Hein from proceeding with Barnum's case. On January 5, 2026, we issued an alternative writ ordering Judge Hein to, within 14 days, either file a written notice of his intention to refrain from proceeding with Barnum's criminal case while Barnum's direct appeal is pending or file an answer or motion to dismiss Patituce's complaint. Judge Hein did not respond to the alternative writ. {¶ 2} After reviewing the matter, we find that Patituce is entitled to a writ of prohibition. "The purpose of a writ of prohibition is to restrain inferior courts from exceeding their jurisdiction." State ex rel. Kerr v. Kelsey, 2019-Ohio-3215, ¶ 5 (6th Dist.), citing State ex rel. Jones v. Suster, 84 Ohio St.3d 70, 73 (1998). To be entitled to a writ of prohibition, a relator 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." State ex rel. Henry v. McMonagle, 87 Ohio St.3d 543, 544 (2000). If the respondent patently and unambiguously lacks jurisdiction,

the relator need not demonstrate that he lacks an adequate remedy in the ordinary course of law. *State ex rel. Davis v. Kennedy*, 2023-Ohio-1593, ¶ 10. {¶ 3} Once an appeal has been filed, the trial court loses jurisdiction over a case except to take action in aid of the appeal. In *re S.J.*, 2005-Ohio-3215, ¶ 9. Put another way, the trial court retains jurisdiction over issues not inconsistent with the appellate court's jurisdiction to affirm, modify, or reverse the judgment appealed from. *Id.* Holding a hearing on pending motions that address the subject of the appeal is not an action in aid of the appeal. It is, however, an action that could affect our ability to affirm, modify, or reverse the trial court order appealed from. See *Yee v. Erie Cty. Sheriff's Dept.*, 51 Ohio St.3d 43, 44 (1990) ("[T]he state's appeal had nothing to do with the 2. motions Therefore, had the common pleas court ruled on these motions, it would not have been acting inconsistently with the court of appeals' jurisdiction to reverse, affirm, or modify the trial court's order"). Based on the evidence before us, it appears that Judge Hein is attempting to hold a hearing on an issue involved in a pending appeal, which he patently and unambiguously lacks jurisdiction to do. Thus, we find that Patituce is entitled to a writ of prohibition preventing Judge Hein from proceeding with Barnum's criminal case, case No. 23 CR 000043, until his direct appeal, case No. F-25- 010, is resolved. To the clerk: Manner of service. {¶ 4} The sheriff of Darke County shall immediately serve, upon the respondent by personal service, a copy of this peremptory writ. {¶ 5} The clerk is further directed to immediately serve upon all other parties a copy of this peremptory writ in a manner prescribed by Civ.R. 5(B). {¶ 6} Costs are taxed to Judge Hein under App.R. 24. It is so ordered. Christine E. Mayle, J.

JUDGE

Gene A. Zmuda, J.

JUDGE

Myron C. Duhart, J.

CONCUR. JUDGE

3.