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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001650-MR

RODERICK ARDIS — APPELLANT

V.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
CIVIL ACTION NO. 04-CI-002465

HONORABLE WILLIAM RYAN,
JEFFERSON DISTRICT COURT;
AND COMMONWEALTH OF KENTUCKY — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: HENRY, McANULTY, AND MINTON, JUDGES.

MINTON, JUDGE: As a general rule, a writ of prohibition is not the proper remedy when the issue is a claimed constitutional defect because the remedy of appeal is adequate. Roderick Ardis brings this appeal from the circuit court's denial of his request for a writ to prohibit the district court from enforcing its order for Ardis to be involuntarily treated and forcibly

medicated, if necessary, to attain competence to stand trial. His substantive argument is based solely on the contention that Kentucky's statute authorizing involuntary treatment is unconstitutional. We affirm the circuit court's denial of the writ because Ardis has an adequate remedy by appeal.

The underlying facts of this case are not in dispute. On November 3, 2003, Ardis was arrested after police were dispatched to a domestic dispute. Upon arrival, the police found Ardis and the victim, Michelle Ardis, in the home. The officers asked Ardis to leave the scene, but he refused and advanced threateningly toward the victim. When a police officer intervened, Ardis attempted to grab the officer. The officer responded with a "take-down technique" to subdue and restrain Ardis. Ardis was arrested and charged with menacing and resisting arrest.

Following arrest, Ardis was admitted to Central State Hospital for an evaluation of his competency. Dr. Larry Curl, a psychologist at Central State, determined that Ardis suffered from a serious psychotic illness that rendered him incompetent to stand trial. Dr. Curl reported that Ardis could attain competency within a reasonable amount of time with antipsychotic medication. But Ardis refused to take the medicines. Dr. Curl further reported that Ardis was a danger to himself and others

at the hospital and that without medication, he would continue to pose such a threat.

A hearing was held in the district court during which Dr. Curl recommended forced medication for Ardis. Ardis argued that KRS 504.110, the statute authorizing the court to order involuntary treatment, was unconstitutional. But the district court rejected the constitutionality argument and ordered Ardis to undergo involuntary treatment at Central State.

Ardis then filed an original action in circuit court for a writ to prohibit the district court from enforcing its order. Ardis argued that the district court should have declared KRS 504.110 unconstitutional in light of the United States Supreme Court's decision in Sell v. United States[1] and that the district court erroneously attempted to fix the defective Kentucky law by engrafting the Sell factors onto KRS 504.110.

The circuit court denied the writ. The circuit court was not persuaded by Ardis's claim that KRS 504.110 was unconstitutional, nor was it convinced that Ardis was without an adequate remedy on appeal. Therefore, because there were "insufficient circumstances in this case to justify the extraordinary remedy sought by [Ardis]," his writ was denied. This appeal follows.

[1] 539 U.S. 166, 123 S.Ct. 2174, 156 L.Ed.2d 197 (2003).

On appeal, Ardis makes two main arguments: first, that the circuit court erroneously denied his writ; and, second, that KRS 504.110 is unconstitutional. We disagree.

It is well-settled that "[r]elief by way of prohibition . . . is an extraordinary remedy and we have always been cautious and conservative both in entertaining petitions for and in granting such relief."[2] The reason for this "careful approach is . . . to prevent short-circuiting normal appeal procedure and to limit so far as possible interference with the proper and efficient operation of our circuit and other courts."[3]

Writs of prohibition have traditionally been divided into two classes. Within those classes, "[t]he distinguishing feature is whether the inferior court allegedly is (1) acting without jurisdiction (which includes 'beyond its jurisdiction'), or (2) acting erroneously within its jurisdiction."[4]

There is no allegation in this case that the district court was acting outside of its jurisdiction; therefore, we are only concerned with the second class of cases. In that type of case, writs of prohibition will not be granted unless "'the petitioner established, as conditions precedent, that he (a) had

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[2] Bender v. Eaton, 343 S.W.2d 799, 800 (Ky. 1961).

[3] *Id.*

[4] *Id; see also*, Grange Mutual Insurance Company v. Trude, 151 S.W.3d 803 (Ky. 2004).

no adequate remedy by appeal or otherwise, *and* (b) would suffer great and irreparable injury (if error has been committed and relief denied).'" Our courts "'have consistently (apparently without exception) required the petitioner to pass the first test; i.e., he must show he has no adequate remedy by appeal or otherwise. The petitioner must then also meet the requirements of the second test, i.e., by showing great and irreparable injury . . . .'"[5]

Applying this test to the present case, it is clear that Ardis has not satisfied the conditions precedent to the granting of a writ of prohibition. Specifically, Ardis has not proved that he is without an adequate remedy by appeal. As a general rule, "[i]n cases involving a claimed constitutional defect . . . the remedy of appeal is adequate and prohibition is not proper."[6]

Ardis's substantive argument is based solely on his belief that KRS 504.110 is unconstitutional. Therefore, his remedy on appeal is sufficient; and his petition for writ of prohibition is procedurally unsound. Had Ardis focused solely on the equity of the forced medication, our conclusion may have differed. But because his claim is centered upon a claimed

[5] Trude, 151 S.W.3d at 808, *quoting* Bender, 343 S.W.2d at 801.

[6] Graham v. Mills, 694 S.W.2d 698, 700 (Ky. 1985); *see also*, Avery v. Knopf, 807 S.W.2d 55 (Ky. 1991).

constitutional defect, we decline to review the merits of his argument via the writ of prohibition.

For this reason, the decision of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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