



LEXSEE 48 OHIO ST2D 303

**THE STATE, EX REL. EDWARDS ET AL., APPELLEES, v. MURRAY, JUDGE
OF THE JUVENILE AND PROBATE DIVISIONS OF THE COURT OF
COMMON PLEAS OF MADISON COUNTY, APPELLANT**

No. 76-607

Supreme Court of Ohio

48 Ohio St. 2d 303; 358 N.E.2d 577; 1976 Ohio LEXIS 753; 2 Ohio Op. 3d 446

December 22, 1976, Decided

PRIOR HISTORY: [***1] APPEAL from the Court of Appeals for Madison County.

This appeal is of right from an order in an original action in the Court of Appeals for Madison County, prohibiting the appellant Murray, Judge of the Juvenile and Probate Divisions of the Court of Common Pleas of Madison County, from proceeding to enforce an order spread upon his court journal directing the Board of County Commissioners to appropriate funds found by him to be reasonably required for the operations of the court for the 1976 calendar year. The order, dated January 19, 1976, and served upon the Madison County auditor and the clerk of the Board of County Commissioners, contained a provision for the board to be heard upon any issue material to the order's extent or propriety which it chose to raise. The order also provided for the maintenance of the status quo with respect to budgetary matters, by a provision therein included with respect to the contingency fund and sequestration fees and costs received by the separate division of the court and in the hands of the county auditor.

The commissioners indicated that they would not comply with the judge's order and sought and received a writ of prohibition in the [***2] Court of Appeals for Madison County ordering the appellant to proceed with neither the hearing nor with the enforcement of his order in contempt, but authorizing him to file in that court or in any other court of competent jurisdiction an application for a writ of mandamus.

The cause is now before this court as a matter of right.

DISPOSITION: *Judgment reversed.*

HEADNOTES

Prohibition -- Remedy not available, when -- Contempt of court -- Juvenile and Probate Division, Court of Common Pleas -- Order directing county commissioners to appropriate funds.

COUNSEL: *Messrs. Lucas, Prendergast, Albright, Gibson, Brown & Newman and Mr. Rankin M. Gibson, for appellees.*

Mr. R. David Picken, prosecuting attorney, and Mr. James W. Rolfes, Sr., for appellant.

JUDGES: O'NEILL, C. J., HERBERT, CORRIGAN, STERN, CELEBREZZE, W. BROWN and P. BROWN, JJ., concur.

OPINION BY: PER CURIAM**OPINION**

[*304] [*578] There is no question that the administration of justice by the judicial branch of the government may not be impeded by the other branches of government in the exercise of its powers or that it is the

duty of county commissioners to appropriate funds necessary to facilitate the administration [***3] of justice by the Court of Common Pleas and its subdivisions.

That this duty is particularized, extended and made legislatively mandatory by R. C. 2151.10 and 2101.11 is recognized by a line of cases, in all of which enforcement of the duty was sought and obtained by an action in mandamus in a court other than the one seeking relief. *State, ex rel. Clarke, v. Bd. of County Commrs.* (1943), 141 Ohio St. 16; *State, ex rel. Motter, v. Atkinson* (1945), 146 Ohio St. 11; *State, ex rel. Ray, v. Bd. of County Commrs.* (1964), 176 Ohio St. 241.

Whether mandamus must be the remedy in this case is the question argued by the appellant. Stated otherwise, [*305] the question is whether Judge Murray, respondent in the Court of Appeals, had jurisdiction *ex parte* to spread upon his journal the order in question, to notify those affected, and to enforce his order by contempt proceedings.

[**579] This matter requires a re-examination of our decision in *In re Contempt of Court* (1972), 30 Ohio St. 2d 182, in which a sharply divided court held that R. C. 2101.23 limited the jurisdiction of the Probate Court to enforce an order for the payment of money by contempt [***4] proceedings.

We conclude that our holding there must be overruled. Where the basic function of a court, whether named in the Constitution or established in pursuance of provisions of the Constitution, is impeded by a failure or refusal of the body responsible to provide a necessary appropriation, that court possesses the inherent power to order such appropriation and to enforce its order by contempt proceedings. If R. C. 2101.23 were read as limiting the court's jurisdiction to enforce this particular order, that statute would exceed legislative authority.

Zangerle v. Court of Common Pleas (1943), 141 Ohio St. 70, and the cases there cited recognize the power of the court, in matters which concern its ability to function and to carry out its basic purposes, to issue orders *ex parte* and to enforce compliance. There is nothing novel in the procedure nor is it essentially violative of the rights of those affected, especially where an opportunity to be heard is provided. The remedy by appeal is adequate, for if error were to intervene or discretion be abused, stays of a questionable order may be granted.

The judgment of the Court of Appeals issuing the writ of prohibition [***5] is therefore reversed.

Judgment reversed.