

FILED  
COURT OF APPEALS

SEP 10 1990

ANDY J. TOTIN  
CLERK OF COURT  
LAKE COUNTY, OHIO

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COURT OF APPEALS  
ELEVENTH DISTRICT  
LAKE COUNTY, OHIO

J U D G E S

HON. JUDITH A. CHRISTLEY, P.J.,  
HON. JOSEPH E. MAHONEY, J.,  
HON. DONALD R. FORD, J.

ROBERT E. GIBBS,  
Petitioner,

-vs-

PATRICK J. WALSH,  
SHERIFF OF LAKE COUNTY,  
Respondent.

CASE NO. 13-106

O P I N I O N

CHARACTER OF PROCEEDING: Original Action for  
Writ of Habeas Corpus

JUDGMENT: Writ denied.

ATTY. RICHARD L. COLLINS, JR.  
ATTY. JAMES M. SPEROS  
100 Society National Bank Building  
77 North St. Clair Street  
Painesville, Ohio 44077

(For Petitioner)

ANTHONY J. CELEBREZZE, JR.  
ATTORNEY GENERAL OF OHIO

JAMES O. PAYNE, JR.  
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ASSISTANT ATTORNEYS GENERAL OF OHIO  
Environmental Enforcement  
30 East Broad Street, 17th Floor  
Columbus, Ohio 43266-0410

(For Respondent)

MAHONEY, J.

This cause is before this court as a result of a Complaint for a Writ of Habeas Corpus filed by petitioner, Robert E. Gibbs, alleging he is being unlawfully held in the Lake County Jail. The parties have stipulated the facts and filed briefs in lieu of final argument.

According to the stipulated facts, the Lake County Common Pleas Court ordered petitioner on October 22, 1987, pursuant to R.C. 2727.12, to post a \$50,000 bond as security that he would obey an injunction allegedly issued by the court on September 17, 1986. On February 3, 1988, the court found petitioner had failed to post the \$50,000 bond and committed him to "close custody," pursuant to R.C. 2727.12, until such bond was posted or assurances of future compliance with the "orders" of the court were given by petitioner. On April 26, 1988, the court again found petitioner had failed to comply as to the bond or assurances and again committed him to "close custody" (the Lake County Jail). However, this court ordered his release on an appearance bond during the pendency of the instant habeas corpus action.

Petitioner contends that the Lake County Common Pleas Court was without jurisdiction to commit him to "close custody," pursuant to R.C. 2727.12, by its orders of February 3, 1988 and April 26, 1988. He argues that the court had no

jurisdiction on October 22, 1987, to require him to post the \$50,000 bond for failure to obey an injunction allegedly set forth in a judgment of the court on September 17, 1986.

Petitioner further argues that in a judgment entered by the trial court on April 3, 1987, the court identified the injunction he allegedly had violated as an injunction set forth in the September 17, 1986 judgment ordering petitioner to cease "violations of law." Petitioner maintains that no such injunction was set forth in the September 17, 1986 judgment but, instead, in said judgment the court ordered him to cease violating the laws. Since no violation of an injunction was involved, petitioner claims the court could not apply R.C. 2727.12 which permits a bond to be set as further security to obey an injunction or restraining order. Petitioner alleges the court only had jurisdiction to punish him for contempt for violating its court order pursuant to R.C. 2705.05 which does not include any authority to require the posting of a bond as security for obeying an injunction.

Petitioner also contends the trial court had no jurisdiction in its April 3, 1987 judgment to appoint a receiver to collect rents.

If an order of commitment is not lawful because of lack of jurisdiction or other defect, the remedy of habeas corpus will lie. In re Lockhart (1952), 157 Ohio St. 192. In the instant cause, petitioner contends that the Lake County Common

Pleas Court's orders of February 3, 1988 and April 26, 1988 committing him to "close custody" pursuant to R.C. 2727.12, were not lawful since the court had no jurisdiction to do so.

Petitioner's contention is based on the theory that R.C. 2727.12 is only authority for requiring a bond as security for obeying an injunction or a restraining order, and the injunction the court found he had allegedly violated was not, in fact, an injunction but, instead, an order. Obviously, this court must determine if the "injunction" the common pleas court found petitioner had violated was, in fact, an "injunction" or a court "order." If it was an "injunction," the court could proceed pursuant to R.C. 2727.12 as to matters of contempt. If it was an "order" of the court, the court should proceed pursuant to R.C. 2727.05 as to matters of contempt.

The parties filed an "Amended Stipulation of Fact" on November 4, 1988 which was admitted into evidence upon a joint motion on March 6, 1989. The "Amended Stipulation of Fact" contains the following stipulation regarding the September 17, 1986 consent judgment:

"On September 17, 1986, the Trial Court in State v. Gibbs, Lake County Court of Common Pleas, Case No. 85-CIV-0815, issued its consent Judgment Entry and Permanent Injunction, marked Exhibit '1-A', which inter alia, ordered Petitioner within ninety (90) days to 'bring the Gibbs Industrial Park into compliance with all applicable state and county laws and regulations pertaining to... sewage treatment and disposal, industrial

waste treatment and disposal, [and] water supply and building codes relating to water usage and supply.'"

This court's review of the September 17, 1986 consent judgment reveals that, in addition to numerous orders including the foregoing order identified in the amended stipulations, the trial court issued a permanent injunction as follows:

"\*\*\* Defendants are further PERMANENTLY ENJOINED from causing or allowing the discharge or placement of sewage, industrial waste and or other waste from the aforementioned property known as Gibbs Industrial Park on North Ridge Road, Painesville, Ohio, to any property, manholes, catch basins, sewers, pipes, drainageways, streams, highways or other areas which adjoin, abut, or are adjacent to the aforementioned Gibbs Industrial Park.

"Defendants are further PERMANENTLY ENJOINED from causing or allowing open burning of any materials in a restricted area. All properties presently owned by Defendant Gibbs or presently operated and/or managed by him are located within the statutory restricted area, therefore, Defendant shall not cause or allow open burning on any of the properties presently owned by E.L. Eighmy, aka Evelyn Gibbs, and managed, operated and/or maintained by Defendant Gibbs."

The trial court made numerous references to this injunction in its April 3, 1987 judgment entry. Specifically, the court stated:

"\*\*\* This court has already issued an injunction on September 17, 1986. The injunction affected the defendants entire property and those who entered the premises for any reason, and this includes the tenants. Any deviation from the purpose and

intent of the Court's order was a direct violation subjecting those infractions to contempt.\*\*\*"

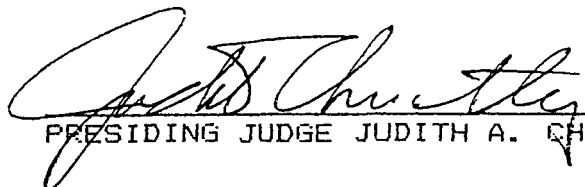
The court found the petitioner "in violation of the injunction issued on September 17, 1986 ordering cessation of violations of law.\*\*\*"

We find that the September 17, 1986 judgment did contain the "injunction" the trial court found petitioner had violated. Therefore, the trial court properly invoked the bond requirement of R.C. 2727.12.

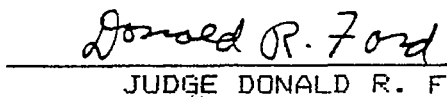
As to petitioner's argument that the trial court had no jurisdiction to appoint a receiver to collect rents by its judgment of April 3, 1987, said appointment of a receiver is not pertinent to the orders of the court committing petitioner to "close custody" for not posting the ordered \$50,000 bond. The court found in its April 3, 1987 judgment that petitioner had violated an injunction to cease "violations of law" and, pursuant to R.C. 2727.12, ordered petitioner on October 22, 1987 to post a \$50,000 bond. The appointment of a receiver is not evidence that the court had no jurisdiction to commit respondent to the Lake County Jail for failing to post the \$50,000 bond as security for his obeying an injunction.

Writ denied. Petitioner's appearance bond is ordered revoked and petitioner is ordered to return to the Lake County Jail by September 17, 1990. The clerk of this court is ordered to return petitioner's appearance bond upon being

satisfied that petitioner has returned to the Lake County Jail pursuant to this decision.

  
PRESIDING JUDGE JUDITH A. CHRISTLEY

  
JUDGE JOSEPH E. MAHONEY

  
JUDGE DONALD R. FORD



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STATE OF OHIO  
 COUNTY OF LAKE

IN THE COURT OF APPEALS  
 ELEVENTH DISTRICT

ROBERT E. GIBBS,  
 Petitioner,

- vs -

PATRICK J. WALSH,  
 SHERIFF OF LAKE COUNTY,

Respondent.

JUDGMENT ENTRY

CASE NO. 13-106

For the reasons stated in this Court's opinion, it is the judgment and order of this Court that petitioner's complaint for a writ of habeas corpus is denied and petitioner's appearance bond is revoked. Petitioner is ordered to return to Lake County Jail by September 17, 1990.

The clerk of courts is ordered to return petitioner's appearance bond upon being satisfied that petitioner has returned to the Lake County Jail pursuant to this Court's judgment.

*Judith A. Christley*  
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 PRESIDING JUDGE JUDITH A. CHRISTLEY

*Joseph E. Mahoney*  
 -----  
 JUDGE JOSEPH E. MAHONEY

*Donald R. Ford*  
 -----  
 JUDGE DONALD R. FORD

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