

FILED

October 27 2015

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: OP 15-0624

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 15-0624

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DANIEL and VALERY O'CONNELL,

Petitioners,

v.

DISTRICT COURT OF THE SIXTH  
JUDICIAL DISTRICT OF MONTANA,  
PARK COUNTY, THE HONORABLE  
DAVID CYBULSKI, PRESIDING JUDGE,

Respondent.

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ORDER

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Petitioners Daniel and Valery O'Connell, appearing as self-represented litigants, have filed an "Original Petition for Writ of Prohibition or Alternate Writ of Review & for Immediate Stay Pending Disposition." Their petition is occasioned by a September 17, 2015 protective order entered by the District Court in underlying litigation pending between O'Connells and the Glastonbury Landowners Association and its current board of directors (collectively, GLA). In the protective order, the District Court prohibits the O'Connells from communicating with GLA except through its attorney, and from publicly disseminating information acquired during this litigation to the public. The court also directs the O'Connells to use the formal discovery process as the only means to obtain information from GLA. O'Connells maintain that the court's order constitutes an unconstitutional prior restraint on publication and prohibits their exercise of lawful conduct. They request that we restrain the respondent District Judge from continuing the protective order in force, and that we enter an immediate stay of the District Court's order until disposition of these proceedings.

We conclude that the requested writs are not available in this proceeding. Section 27-27-101, MCA, provides that a writ of prohibition may arrest the proceedings of any

tribunal, corporation, board, or person that is exercising judicial functions “when such proceedings are without or in excess of the jurisdiction of such tribunal, Corporation, board, or person.” Although the O’Connells complain that the District Court is operating under mistake of law given the breadth of the protective order, there is no allegation that the court is exceeding its jurisdiction. We have previously granted a writ of prohibition restricting a district court where it is clear that the court lacked jurisdiction over parenting and child custody matters regarding children whose home state was Arkansas, not Montana. *Stephens v. Fourth Judicial District Ct.*, 2006 MT 21, ¶ 18, 331 Mont. 40, 128 P.3d 1026. Here, there is no question that the District Court has jurisdiction over the case before it, nor have the O’Connells alleged to the contrary.

In addition, a writ of prohibition is issued “upon an affidavit on the application of the person beneficially interested.” Section 27-27-102, MCA. The O’Connells have not filed an affidavit in support of their petition.

Turning to the writ of review, Section 27-25-102, MCA, permits a court to grant a writ of review either “in proceedings for contempt in District Court; or . . . [if] . . . the district court . . . has exceeded the jurisdiction of the tribunal . . . and there is no appeal or, in the judgment of the court, any plain, speedy, and adequate remedy.” Section 27-25-102(1) and (2), MCA. No contempt is alleged here nor—as above—is there an allegation that the District Court has exceeded its jurisdiction. We have held that all of the requirements of Section 27-25-102(2), MCA, must be met before the writ of certiorari or review can be granted by a court. *State v. Crane*, 196 Mont. 305, 308, 639 P.2d 514 (1982).

Moreover, under Section 27-25-201, MCA, an application for a writ of review “must be made on affidavit by the party beneficially interested.” Again, the O’Connells have submitted no affidavits in support of their petition.


A petitioner seeking relief by way of the foregoing writs must comply with the statutory requisites. For the foregoing reasons, we conclude that neither a writ of prohibition nor a writ of review is available to the O’Connells in this matter. Therefore,

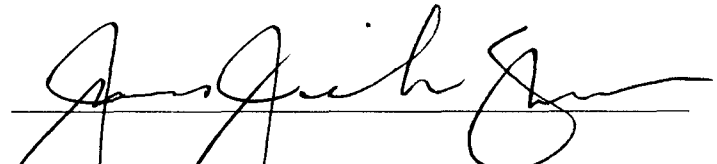
IT IS ORDERED that O'Connells' original petition for writ of prohibition or writ of review and for immediate stay pending disposition is DENIED.

The Clerk of this Court is directed to provide notice of this Order to the O'Connells at their last known address, to all counsel of record, and to the Honorable David Cybulski, Montana ~~Fifteenth~~<sup>SIXTH</sup> Judicial District Court.

DATED this 27 day of October, 2015.

  
Chief Justice

  
Patricia Celler

  
Josephine Green

  
John Rice  
Justices