

SC99794

IN THE MISSOURI SUPREME COURT

STATE OF MISSOURI *EX REL.*

BETTY GROOMS

Petitioner/Relator,

v.

JUDGE STEVEN A. PRIVETTE

Respondent.

Petition for a Writ of Prohibition
from Oregon County Case No. 22AM-CC00024
and
Missouri Court of Appeals, Southern District, Case No. SD37707

REPLY BRIEF OF PETITIONER/RELATOR BETTY GROOMS

/s/ David M. Duree

David M. Duree, MBE #21003

David M. Duree & Associates, P.C.

312 South Lincoln Avenue

O'Fallon, IL 62269

618.628.0186 (T)/618.628.0259 (F)

law@dmduree.net

*Attorney for Petitioner/Relator Betty
Grooms*

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REPLY POINTS

- I. A PEREMPTORY WRIT OF PROHIBITION SHOULD ISSUE PROHIBITING PROSECUTION OF THE CONTEMPT MOTION, BECAUSE THE COURTS ONLY HAVE CONTEMPT AUTHORITY TO ENFORCE JUDGMENTS AND ORDERS ISSUED IN PROCEEDINGS IN WHICH THE PARTIES ARE PROVIDED WITH CONSTITUTIONAL DUE PROCESS RIGHTS AND THE RIGHT OF APPEAL
- *State ex rel. Geers v. Lasky*, 449 S.W.2d 598 (Mo. banc 1970)
 - *Asbury v. Lombardi*, 846 S.W.2d 196 (Mo. banc 1993)
 - *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573 (Mo. banc 1994)
 - *State ex rel. Praxair, Inc. v. Missouri Public Service Commission*, 344 S.W.3d 178 (Mo. banc 2011)
- II. A PEREMPTORY WRIT OF PROHIBITION SHOULD ISSUE PROHIBITING JUDGE PRIVETTE FROM HEARING AND DECIDING THE CONTEMPT MOTION, BECAUSE BETTY GROOMS' TIMELY MOTION FOR CHANGE OF JUDGE SHOULD HAVE BEEN GRANTED IN THAT THE MOTION FOR CONTEMPT IS AN ORIGINAL PROCEEDING; THERE WAS NO UNDERLYING CASE
- Code of Judicial Conduct Rule 2-2.11(A)(5)
 - RSMo. §476.180
 - Supreme Court Rule 51.05
 - Supreme Court Rule 32.07(a)

REPLY ARGUMENT

- I. A PEREMPTORY WRIT OF PROHIBITION SHOULD ISSUE PROHIBITING PROSECUTION OF THE CONTEMPT MOTION, BECAUSE THE COURTS ONLY HAVE CONTEMPT AUTHORITY TO ENFORCE JUDGMENTS AND ORDERS ISSUED IN PROCEEDINGS IN WHICH THE PARTIES ARE PROVIDED WITH CONSTITUTIONAL DUE PROCESS RIGHTS AND THE RIGHT OF APPEAL

Respondent has cited numerous cases on the statutory and inherent authority of a court to use contempt proceedings to enforce its orders and judgments (Respondent's Brief pp. 17-20), but has not cited a single case in which contempt proceedings were used to enforce a non-judicial administrative order.

Prior to the amendment of the Missouri Constitution, effective January 2, 1979, reorganizing the court system, MO. CONST. ART. V, §27, and prior to the enactment of

RSMo. §478.240, also effective January 2, 1979, this Court ruled that a circuit judge could assign tasks to a circuit clerk but could not “supervise the detailed manner in which the clerk performs his various duties (sic)”. *State ex rel. Geers v. Lasky*, 449 S.W.2d 598, 600 (Mo. banc 1970). The court did not reach the issue of whether the clerk could be held in contempt of court for not complying with a new local rule providing, inter alia, that “the appointment or removal of the deputy clerk so assigned shall be approved by the judge of the division.” The Respondent refused to approve a deputy clerk that the circuit clerk assigned to his division. The clerk had also reassigned the original deputy clerk. The circuit clerk was ordered to appear and show cause why he should not be held in contempt of court for violating the new local rule. The contempt motion was *not* based on the alleged failure to comply with a non-judicial administrative order. Neither the trial court, nor this Court, reached the contempt issue. *Id.*

This Court held that the circuit court was not authorized by statute or its inherent rule-making power to adopt a local rule providing for the appointment or removal by deputy clerks by the division judges. In addressing the circuit judge’s claim of inherent powers, this Court stated that courts have inherent power “to do all things that are reasonably necessary for the administration of justice, and to preserve its existence and function as a court and which powers exist and inhere merely because it is a court irrespective of legislative or constitutional grants.” *Id.* at 601. This Court also ruled that the part of the new local rule which permitted the division judges to approve their deputy clerks was void, and that the circuit court did not have the inherent authority, or constitutional or legislative authority, to adopt that rule. *Id.* at 601.

In *Asbury v. Lombardi*, 846 S.W.2d 196 (Mo. banc 1993), this Court ruled that a statute which provides that the aggrieved party, in a proceeding before the State Personnel Advisory Board (“PAB”), could appeal to either the Administrative Hearing Commission (“AHC”) or to the circuit court, but not both, was unconstitutional because it did not provide for judicial review. Two corrections officers had been ordered reinstated by the PAB, but those decisions had been reversed by the AHC. Under the statute, they were not entitled to judicial review because the Department of Corrections had appealed to the AHC, precluding the officers from then proceeding in the courts. The mere possibility of judicial review was not sufficient. The court noted that MO. CONST. ART. V, §18 recognizes that administrative bodies may make decisions, findings, rules and orders which are judicial or quasi-judicial and affect private rights, stating that “in those instances, the section requires administrative decisions to be ‘subject to direct review by the courts.’” Thus, an agency may perform adjudicative functions without violating the Constitution so long as the agency’s decision is subject to ‘direct review by the courts’ MO. CONST. ART. V, §18.” *Asbury v. Lombardi* at p. 200.

Respondent also cites RSMo. §536.095 (Respondent’s Brief, p. 20) and *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 580-81 (Mo. banc 1994), which held: “the purpose of §536.095 is to give an agency, which has no inherent contempt power, a method through which to vindicate its authority and dignity. State agencies are the intended beneficiaries of §536.095.”

The decision of an administrative agency has statutory contempt authority because its decisions are subject to judicial review and must comply with constitutional due process

under MO. CONST. ART. I, §10, which provides: “That no person shall be deprived of life, liberty or property without due process of law.” “The procedural due process requirement of fair trials by fair tribunals applies to an administrative agency acting in an adjudicative capacity.” *State ex rel. Praxair, Inc. v. Missouri Public Service Commission*, 344 S.W.3d 178, 191 (Mo. banc 2011).

Non-judicial administrative orders may not be enforced through contempt proceedings because they are not subject to judicial review and may be issued without complying with the due process of law clause in the Missouri Constitution.

Judge Privette’s non-judicial administrative orders directing Betty Grooms (“Betty”) to prepare a spreadsheet of all criminal cases for the past four (4) years was issued without notice, without a hearing and without the right of appeal. Such orders may not be enforced through contempt proceedings.

II. A PEREMPTORY WRIT OF PROHIBITION SHOULD ISSUE PROHIBITING JUDGE PRIVETTE FROM HEARING AND DECIDING THE CONTEMPT MOTION, BECAUSE BETTY GROOMS’ TIMELY MOTION FOR CHANGE OF JUDGE SHOULD HAVE BEEN GRANTED IN THAT THE MOTION FOR CONTEMPT IS AN ORIGINAL PROCEEDING; THERE WAS NO UNDERLYING CASE

Respondent argues that Betty is not entitled to a change of judge because they are not permitted in contempt proceedings (Respondent’s Brief, pp. 27-30). None of the cases cited by Respondent involved original contempt cases without an underlying substantive case (or administrative agency proceeding) in which an order or judgment had been issued, in which all parties were afforded constitutional due process under MO. CONST. ART. I, §10.

There was no underlying proceeding in the case *sub judice*. Judge Privette's non-judicial administrative orders were issued without notice, without a hearing and without the right of appeal. The theory that a contempt proceeding is merely an extension of an underlying proceeding does not apply here. *Reeves v. Moreland*, 577 S.W.2d 125, 130 (Mo.App. E.D. 1979) and *Houston v. Hennessey*, 534 S.W.2d 52, 55 (Mo.App. E.D. 1975) are inapposite because both cases involved an order or judgment issued in an underlying court case.

Respondent fails to address Code of Judicial Conduct Rule 2-2.11(A)(5), which provides that a judge shall recuse himself from any proceeding in which the judge's impartiality might reasonably be questioned because the judge served in governmental employment, and in such capacity participated personally and substantially as a public official concerning the proceeding *or* was a material witness concerning the matter. Judge Privette is the person who issued the non-judicial administrative order that forms the basis for the contempt charge. He is the person who was dissatisfied with Betty's attempts to respond. He is the person who decided to file the contempt charges. He is not merely an impartial judge deciding a dispute among two other parties. RSMo. §476.180 provides: "No judge of any court of record, who is interested in any suit *** shall, without the express consent of the parties thereto, sit on the trial or determination thereof." and Supreme Court Rules 51.05 and 32.07(a) provide for changes of judge upon request at the beginning of either a civil or criminal proceeding. A peremptory writ of prohibition is required to prohibit Judge Privette from sitting and ruling on the Motion for Contempt (which he initiated as an original case).

CONCLUSION

FOR THE FOREGOING REASONS, Petitioner/Relator Betty Grooms, respectfully moves the Court to make the preliminary writ of prohibition absolute and permanent.

/s/ David M. Duree
David M. Duree, MBE #21003
David M. Duree & Associates, P.C.
312 South Lincoln Avenue
O’Fallon, IL 62269
618.628.0186 (T)/618.628.0259 (F)
law@dmduree.net
*Attorney for Attorney for Petitioner/Relator
Betty Grooms*

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies pursuant to Rule 84.06(c), Respondent’s Brief: (1) complies with the limitations contained in Rule 84.06(b); (2) was prepared using Microsoft Word in Times New Roman 13-point font; (3) contains 1,561 words, determined by Microsoft Word; (4) was electronically served on all counsel of record through the CM/ECF system; and (5) was separately served via email, this 12th day of January, 2023, on the interested parties noted below:

Heath Hardman
Howell County Asst. Prosecuting Attorney
326 Courthouse
West Plains, MO 65775
heath.hardman@prosecutors.mo.gov
Attorney for Judge Steven Privette

Judge Steven A. Privette
Presiding Judge
106 Courthouse
West Plains, MO 65775
Steven.privette@courts.mo.gov
Respondent

/s/ David M. Duree
David M. Duree, MBE #21003
David M. Duree & Associates, P.C.

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true copy of the Reply Brief of Petitioner/Relator Betty Grooms was electronically filed and was served on all counsel of record electronically through Case.net and a separate copy was sent via email, this 12th day of January, 2023.

/s/ David M. Duree

David M. Duree, MBE #21003

David M. Duree & Associates, P.C.