

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED February 21, 2025
Appeal from the District Court, Elbert County, 2024CV5	
Plaintiff-Appellant:	
Jacob Bellinsky, v.	Supreme Court Case No: 2024SA214
Defendant-Appellee:	
Rachel Zinna Galan.	
ORDER OF COURT	

Upon consideration of the Notice of Appeal, together with the brief(s) and the record filed herein, and now being sufficiently advised in the premises,

IT IS ORDERED that the decision of the Elbert County District Court is
AFFIRMED.

BY THE COURT, EN BANC, FEBRUARY 21, 2025.
JUSTICE HOOD does not participate.

APPENDIX B

DISTRICT COURT, ELBERT COUNTY STATE OF COLORADO 751 Ute Avenue Kiowa, CO 80117	DATE FILED: July 10, 2024 1:29 PM
RABBI JACOB BELLINSKY, Petitioner	
vs.	Court Use Only
RACHEL ZINNA GALÁN, Respondent.	
ORDER RE: MOTION FOR ISSUANCE OF WRIT OF HABEAS CORPUS & ORDER TO SHOW CAUSE PURSUANT TO C.R.S. §§ 13-45-102 and 13-45-101	

THIS MATTER comes before this Court on the Plaintiff's Motion for Issuance of a Writ of Habeas Corpus & Order to Show Cause Pursuant to C.R.S. § 13-45-102 and 13-45-101. The Court, having read the Plaintiff's Motion and ancillary documents, issues the following Findings and Order.

I. Background

The Plaintiff is a litigant in several cases involving the Defendant. The earliest of these cases is 2015DR7, a Gilpin County case involving the dissolution of the marriage between the Plaintiff and the Defendant. In that case, the Plaintiff is restricted in his contact with his minor children until he engages in certain remedial actions that the Court determined are necessary and in the best interests of the children. Earlier this year, Magistrate Bryce Allen of Gilpin County issued Orders granting Defendant's Motions regarding decision making and allowed the Defendant to relocate with the children. Plaintiff filed a timely motion for review of the magistrate's order pursuant to C.R.M. 7(a). On March 27, 2024, Judge Lindsey L. VanGilder, District Court Judge of the First Judicial District, entered an Order adopting and affirming the Magistrate's findings and Order. Plaintiff filed a notice of appeal in that case on March 1, 2024, and the appeal is pending at the Colorado Court of Appeals (2024CA355).

APPENDIX D

The next action of which the Plaintiff complains is Elbert County case 2022C59. In that case Defendant sought a civil protection order on September 26, 2022. A temporary protection order was issued on September 27, 2022. On October 7, 2022, Judge Palmer Boyette found that the Temporary Protection Order was properly served upon the Plaintiff and that the Plaintiff failed to appear for the hearing after proper notice. A Permanent Protection Order was issued on that date. Defendant did not seek to include the parties' children as protected parties and the protection order that was issued did not affect the prior orders in 2015DR7 (Gilpin County). There was no further action in this protection order case until April 11, 2023, when Plaintiff sought relief from the Permanent Protection Order, alleging that the action and Orders are "known void."

The next matters of which Plaintiff complains are misdemeanor actions filed in Elbert County Court. In 2022M143, Plaintiff was charged with violating the protection order issued in 2022C59. After a trial to jury on January 2nd and 3rd, 2024, a verdict of guilty on Count 1, Violation of a Protection Order, was entered. Sentencing was held on April 4, 2024. The Plaintiff was sentenced to probation with conditions. No jail time was imposed. On April 15, 2024, Plaintiff filed his notice of appeal to the District Court pursuant to C.R.Crim.P. 37. The appeal is presently pending in the District Court, 2024CV2.

Finally, Plaintiff asserts that his liberty interests are adversely affected by Elbert County case 2022M152. This matter was filed on November 29, 2022. A mandatory protection order was issued and posting of bond was required on January 17, 2023. Plaintiff appeared one other time on March 3, 2023. The matter was dismissed on April 17, 2024, and the mandatory protection order and bond requirement were vacated on that date.

II. Standard of Review

Plaintiff brings this action pursuant to C.R.S. § 13-45-102 and C.R.S. § 13-45-101. C.R.S. § 12-45-102 states: "When a person not being committed or detained for any criminal or supposed criminal matter is confined or restrained of his liberty under any color or pretense whatever, he may proceed by appropriate action as prescribed by the Colorado rules of civil procedure in the nature of habeas corpus . . . The same proceedings shall thereupon be had in all respects as are directed in section 13-45-101."

C.R.S. § 13-45-101(1) provides that "the court to which the application is made shall forthwith award the writ of habeas corpus, unless it appears from the petition itself, or from the

documents annexed, that the party can neither be discharged nor admitted to bail nor in any other manner relieved.”

III. Analysis

Plaintiff filed his Forthwith Verified Petition for Writ of Habeas Corpus together with numerous appendices on June 10, 2024. The Plaintiff in this matter asserts that he is either confined or restrained of his liberty in the various cases cited above. The Court has reviewed Plaintiff’s Motion and the attached appendices and finds that the *factual* allegations in the pleadings do not make a *prima facie* showing that he is confined, nor do they demonstrate a serious infringement of a fundamental constitutional right.

Throughout his pleadings Plaintiff asserts without support that the actions of judicial officers in the First Judicial District and in the Eighteenth Judicial District are “known-void” actions. The fact that Plaintiff asserts, without support, that the actions of the various courts are void or “known-void” does not make them so. Such statements are conclusory and do not find support in the materials provided.

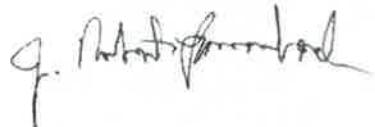
Plaintiff is not presently detained or otherwise deprived of his liberty. There are no final judgments in any of the cases cited by the Plaintiff. Except for 2022M152, which was dismissed, notices of appeal have been filed in each case and no mandates have been issued depriving Plaintiff of any rights. Plaintiff has adequate legal remedies through his various appeals to challenge the actions taken in each of these cases.

A review of case law concerning C.R.S. § 13-45-102, reveals that it has been used in cases where non-parents or parents having no right to detain related or non-related children in their care have refused to return children to their rightful caretaker. *See, Johnson v. Black*, 322 P.2d 99 (Colo. 1958); *Fackerell v. District Court*, 295 P.2d 682 (Colo. 1956); *Woodson v. Ingram*, 477 P.2d 465 (Colo. 1970); *Lopez v. Smith*, 146 P.2d 967 (1961); *Wilson v. Wilson*, 474 P.2d 789 (1970). This is not the case regarding these children. Defendant has care and control of the children as the result of a court order. As stated by the District Judge in that case, Plaintiff’s parental rights were not terminated by the Magistrate’s action and he has the right to contest the orders through his appeal. Plaintiff’s remedy is to pursue his appeal in that action and to convince the appellate court that the District Court was in error in restricting his contact with the children.

IV. Order

It is therefore ORDERED that the Plaintiff's Motion for Writ of Habeas Corpus is hereby DENIED and the matter is ordered DISMISSED.

Dated: July 10, 2024



J. Robert Lowenbach
Senior District Court Judge

**Additional material
from this filing is
available in the
Clerk's Office.**