IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: DECEMBER 19, 2013
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2013-SC-000415-MR

LAKE CUMBERLAND RESORT, INC. — APPELLANT

V.

ON APPEAL FROM COURT OF APPEALS
NO. 2013-CA-000497-OA
PULASKI CIRCUIT COURT NO. 08-CI-00317

HON. JEFFREY THOMAS BURDETTE (JUDGE, PULASKI CIRCUIT COURT, DIVISION II), ET AL. — APPELLEES

AND

WILLIAM THOMPSON, ET AL. — REAL PARTIES IN INTEREST

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Lake Cumberland Resort, Inc., petitioned the Court of Appeals for a writ of prohibition to prevent the Pulaski Circuit Court from granting a motion to compel certain business records. The Court of Appeals denied the petition and Appellant now appeals to this Court as a matter of right, Ky. Const. § 115, CR 76.36(7)(a), asking this Court to review that decision. After careful review, we affirm the Court of Appeals and deny Appellant's writ.

I. BACKGROUND

Appellant is a for-profit entity organized and operated by Anthony and Francis Del Spina for the purpose of developing residential real estate property

located near Lake Cumberland in Pulaski County, Kentucky. Also involved in this litigation is the Lake Cumberland Resort Community Association, Inc. (Association), a non-profit homeowners' association for the property owners of the resort. The Association was initially owned and operated by the Del Spinas but was eventually turned over to the homeowner members of the Association. The present case originated out of litigation involving numerous issues concerning the governance and finances of the Association discovered during the turnover process.

In 2008, homeowners William and Theresa Thompson filed a civil action in Pulaski Circuit Court to enjoin the Board of Directors of the Association from taking any further actions on behalf of the Association. Also of significance for the purposes of the matter before this Court, the Thompsons sought to compel a complete accounting of all of the actions taken by the Board.

Discovery resulting from this litigation revealed questionable activity regarding the commingling of finances between the for-profit Appellant and the non-profit Association. During a deposition, the bookkeeper for both Appellant and the Association revealed that the best source for this information would be located in QuickBooks files.

The Thompsons repeatedly entered written discovery requests to obtain Appellant's QuickBooks data. In response, the Pulaski Circuit Court granted the motion for production of the QuickBooks data but also ordered any and all confidential information to be kept confidential under the protective order.

However, Appellant continued to dispute the discoverability of the QuickBooks information.

In order to again attempt to obtain the data, the Thompsons filed a subsequent pleading in February 2013. Appellant responded, objecting to production of the QuickBooks data:

> The Quickbooks data contains confidential information including employee wage information and social security numbers. The Quickbooks data includes construction and rental program information. This data includes bank account and routing numbers for those individuals in the rental program.
>
> The Defendant, LCR, has provided an Excel disc that contains the entire check register as well as deposits beginning and ending in 2007. The Excel data was transposed from the QuickBooks data without confidential employee information, without the construction and rental information that the Plaintiffs have stated they do not want.
>
> The Excel data base can be sorted by date, page, expense, category, amount, and deposit.
>
> The Defendant, LCR, has given Plaintiffs' counsel the opportunity to inspect and copy over 2,200 pages of financial data and offered to permit her to return to review the financial data.

The circuit court granted the motion to compel, ordering Appellants to produce a usable version of the QuickBooks data within fourteen days, and again ordered the protection of confidential information.

Appellants then sought the protection of the Court of Appeals by filing a writ of prohibition. The Court of Appeals denied Appellant's petition for a writ, and Appellant now asks this Court to reverse that finding and issue the requested writ.

II. ANALYSIS

Kentucky case law sets forth two "classes" where a writ may be appropriate: (1) where the lower court is acting outside its jurisdiction, and (2) where the lower court is acting erroneously but within its jurisdiction. *Powell v. Graham*, 185 S.W.3d 624 (Ky. 2006). The standards for granting petitions for writs of prohibition and mandamus are the same. *Mahoney v. McDonald-Burkman*, 320 S.W.3d 75, 77 n.2 (Ky. 2010) (*citing Martin v. Admin. Office of Courts*, 107 S.W.3d 212, 214 (Ky. 2003)). This Court set forth that standard in *Hoskins v. Miracle*:

> A writ . . . *may* be granted upon a showing that (1) the lower court is proceeding or is about to proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court; or (2) that the lower court is acting or is about to act erroneously, although within its jurisdiction, and *there exists no adequate remedy by appeal* or otherwise and great injustice and irreparable injury will result if the petition is not granted.

150 S.W.3d 1, 10 (Ky. 2004) (emphasis added). In *Kentucky Employers Mutual Insurance v. Coleman,* we reiterated the long-standing, lofty standards which must be attained before a writ will be granted:

> [T]he writs of prohibition and mandamus are extraordinary in nature, and the courts of this Commonwealth "have always been cautious and conservative both in entertaining petitions for and in granting such relief." *Bender v. Eaton*, 343 S.W.2d 799, 800 (Ky. 1961).
>
> > This careful approach is necessary to prevent short-circuiting normal appeal procedure and to limit so far as possible interference with the proper and efficient operation of our circuit and other courts. If this avenue of relief were open to all who considered themselves aggrieved by an interlocutory court order, we would face an impossible burden of nonappellate matters.

> *Id.* This policy is embodied in a simple statement from a recent case: "Extraordinary writs are disfavored . . . ." *Buckley v. Wilson,* 177 S.W.3d 778, 780 (Ky. 2005).

236 S.W.3d 9, 12 (Ky. 2007).

Appellant invokes the second class of writ, alleging that the trial court acted erroneously but within its jurisdiction. Accordingly, he is required to satisfy the threshold inquiry of establishing (1) lack of adequate remedy by appeal or otherwise and (2) that great injustice and irreparable injury will result if his petition is not granted. *The St. Luke Hosp., Inc. v. Kopowski,* 160 S.W.3d 771, 774-75 (Ky. 2005). We review the Court of Appeals' denial of this second class of writ of prohibition for an abuse of discretion. *See Grange Mut. Ins. Co. v. Trude,* 151 S.W.3d 803, 810 (Ky. 2004). "The test for abuse of discretion is whether the [court's] decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Goodyear Tire & Rubber Co. v. Thompson,* 11 S.W.3d 575, 581 (Ky. 2000) (*citing Commonwealth v. English,* 993 S.W.2d 941, 945 (Ky. 1999)).

A. Adequate Remedy by Appeal

The first inquiry this Court must address in reviewing the writ in the case at bar is whether the Appellant had an adequate remedy by appeal. Under Kentucky law, a writ cannot be used as a substitute for an appeal. *National Gypsum Co. v. Corns,* 736 S.W.2d 325, 326 (Ky. 1987) (*citing Merrick v. Smith,* 347 S.W.2d 537 (1961)).

We will concede, as was held by the Court of Appeals below, that "[t]here will rarely be an adequate remedy on appeal if the alleged error is an order that

allows discovery." *Grange Mut. Ins. Co. v. Trude*, 151 S.W.3d 803, 810 (Ky. 2004). Therefore, given that this prong of the standard has been sufficiently satisfied, we will address whether Appellant suffered great injustice or irreparable harm.

B. Great Injustice or Irreparable Harm

Appellant argues that it should not be required to produce the records containing confidential employee information such as social security numbers, wage information, and bank account numbers. Specifically, Appellant alleges that it will be subjected to irreparable injury, as will the others whose confidential information is disclosed, and a great injustice will be done to both the corporate entity and those individuals whose highly sensitive data is revealed.

This Court's predecessor has defined irreparable injury to "mean something of a ruinous nature." *Bender*, 343 S.W.2d at 801. In the present case, Appellant's claim of irreparable injury is based upon the fact that the QuickBooks data contains confidential information. However, when the trial court compelled production, it also granted Appellant's protective order to prevent disclosure of all confidential information. This Court has previously declined to issue a writ to prohibit the disclosure of business and financial records containing confidential information when those records are subject to an order of protection and confidentiality. *See Edwards v. Hickman*, 237 S.W.3d 183 (Ky. 2007). We further held that "[s]uch protection functions as a safety valve, giving the circuit court the power to control the use of the

discovery, and is sufficient to avoid great and irreparable harm." *Id.* at 191.

The Court of Appeals relied upon *Edwards v. Hickman* in making its determination to deny Appellant's writ of prohibition. Given that the Court of Appeals' decision is sufficiently supported by case law, we find that its decision was reasonable and thus, there was no abuse of discretion. *Goodyear*, 11 S.W.3d at 581.

III. CONCLUSION

We hold that Appellant failed to satisfy the threshold requirement of demonstrating a "great injustice or irreparable injury" necessary for the granting of a writ. Therefore, the Court of Appeals did not abuse its discretion, and we affirm its judgment.

All sitting. All concur.

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