IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE	§	
PETITION OF LYNN M. SMITH[1]	§	No. 512, 2006
FOR A WRIT OF PROHIBITION	§	

Submitted: October 10, 2006
Decided: December 14, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

O R D E R

This 14th day of December 2006, it appears to the Court that:

(1) Petitioner Lynn M. Smith, through her counsel, has filed a petition with this Court requesting the issuance of a writ of prohibition, pursuant to Supreme Court Rule 43, to prohibit the Family Court from exercising its jurisdiction to hear a custody petition filed in that Court by Carol M. Guest. Guest, through her counsel, has filed a response in opposition to Smith's petition for an extraordinary writ. We conclude that an extraordinary writ is inappropriate under these circumstances because Smith has an adequate remedy in the appellate process. Accordingly, Smith's petition is dismissed.

(2) The record reflects that Smith and Guest were involved in a ten-year romantic relationship, during which time Smith adopted a child whom the parties intended to raise together. Smith filed a motion to dismiss Guest's

[1] The Court has assigned pseudonyms pursuant to Supreme Court Rule 7(d).

custody petition on the ground that Family Court did not have jurisdiction to hear a custody petition filed by a non-parent, absent allegations of dependency or neglect. On June 27, 2006, the Family Court, in a thorough fifty-four-page opinion, concluded that Guest was a "de facto" parent of Smith's adopted child and, thus, denied Smith's motion to dismiss for lack of subject matter jurisdiction. Smith sought to file an interlocutory appeal from that ruling. We refused that interlocutory appeal on August 15, 2006.

(3) A writ of prohibition is the legal equivalent of the equitable remedy of injunction and may be issued to prevent a lower court from exceeding the limits of its jurisdiction.[2] Because prohibition is an extraordinary remedy, this Court is reluctant to grant such a writ unless the lack of jurisdiction of the trial court is "manifestly apparent" on the record.[3] Like a writ of mandamus, a writ of prohibition will not issue if the petitioner has another adequate remedy at law.[4]

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[2] *In re Hovey*, 545 A.2d 626, 628 (Del. 1988).

[3] *Id.*

[4] *Id.*

(4) Smith's petition fails to invoke this Court's original jurisdiction to issue an extraordinary writ. We do not find the Family Court's lack of jurisdiction to hear Guest's custody petition to be "clear and unmistakable."[5] Moreover, Smith has an adequate remedy in her right to appeal to this Court once the Family Court has issued its final order on custody and visitation in this matter. This Court will not allow the extraordinary writ process to be distorted into a substitute for appellate review.[6]

NOW, THEREFORE, IT IS ORDERED that Smith's petition for a writ of prohibition is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland
Justice

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[5] *Id.* at 629.

[6] *Matushefske v. Herlihy*, 214 A.2d 883 (Del. 1965).