

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.

RENDERED: SEPTEMBER 18, 2003
NOT TO BE PUBLISHED

Supreme Court of Kentucky
FINAL

2003-SC-0085-MR

DATE 10-9-03 EIA/Growth, D.C.

CONLEY ANDERSON AND
CLEO ANDERSON

APPELLANTS

V. APPEAL FROM KENTUCKY COURT OF APPEALS
CASE NO. 2002-CA-2247

HONORABLE STEPHEN BATES,
JUDGE, OWEN CIRCUIT COURT

APPELLEE

AND

JAMES PERKINS

REAL PARTY IN INTEREST

AND

JAMIE D. PERKINS

REAL PARTY IN INTEREST

AND

KENTUCKY FARM BUREAU MUTUAL
INSURANCE COMPANY

REAL PARTY IN INTEREST

OPINION OF THE COURT

AFFIRMING

Appellants in the above-styled action sought a writ of prohibition from the Court of Appeals requesting that the Owen Circuit Court be prohibited from proceeding with a civil trial for negligence arising from an automobile accident. Appellants also applied for the writ under the theory that the trial judge had no authority to preside over the trial due

to a motion pending before the Supreme Court that requested his recusal from the case. The Court of Appeals denied the writ and we affirm for the reasons set forth herein.

The trial court entered an order dated November 1, 2002, that effectively set aside a partial settlement agreement between the real parties in interest and their respective insurance carriers based on the trial court's finding that Appellant, Conley Anderson, had given false information in his deposition regarding a pre-existing medical condition. Over Appellants' objection, the trial court then set a trial date for November 6, 2002.

On November 5, 2002, Appellants filed a petition for a writ of prohibition with the Court of Appeals and a motion for intermediate relief pursuant to CR 76.36(4), seeking a temporary order continuing the trial. Appellants also filed a motion to disqualify the trial judge with Chief Justice Lambert of the Kentucky Supreme Court and sought the appointment of a special judge pursuant to KRS 26A.015, *et seq.* The Court of Appeals granted Appellants' motion for intermediate relief and stayed the trial until it had such chance to rule on the writ. Chief Justice Lambert denied Appellants' request for disqualification of the trial judge, stating that Appellants would have a remedy by appeal.

Ultimately, the Court of Appeals denied Appellants' writ of prohibition due to a failure to demonstrate that Appellants would suffer irreparable harm if the trial were allowed to proceed. The court also stated that Appellants retain the right to seek appeal of the matter after a final judgment in the case is entered. We agree.

A writ of prohibition is an extraordinary remedy and should only be granted in exceptional circumstances. As a general rule, in order to be entitled to such relief a petitioner must show that he or she has no adequate remedy by appeal or otherwise, and either: (1) the court below is acting without or beyond its jurisdiction; or (2) he or she will suffer great and

irreparable injury if the court below is acting in error and relief is not granted.

James v. Shadoan, Ky., 58 S.W.3d 884, 885 (2001) (citations omitted).

Appellants argued to the Court of Appeals that a continuance was necessary because they intended to file a lawsuit to enforce the settlement agreement invalidated by Judge Bates. They argued that they would then be forced to try this case numerous times thus resulting in great and irreparable injury. Appellants' argument before this Court is not as clear. Appellants allege that we should grant the writ to prevent a serious miscarriage of justice even in the absence of a showing of specific great and irreparable injury, citing to Bender v. Eaton, Ky., 343 S.W.2d 799 (1961). Regardless, Appellants have not demonstrated that they do not have an adequate remedy by appeal. This factor is an absolute prerequisite for the issuance of such an extraordinary remedy as a writ of prohibition. Bender, 343 S.W.2d at 801.

Once this case proceeds to trial and a final judgment is entered, Appellants may appeal any interlocutory order of the trial court, including the decision to invalidate the proposed settlement agreement. See Ison v. Bradley, Ky., 333 S.W.2d 784, 786 (1960). It is also noted that the settlement agreement only pertained to Mr. Anderson's claims and that a trial regarding Mrs. Anderson's claims may be inevitable in any event.

Accordingly, we affirm the Court of Appeals' decision to deny Appellants' application for a writ of prohibition.

All concur.

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