

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.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: AUGUST 25, 2005
NOT TO BE PUBLISHED

Supreme Court of Kentucky **FINAL**

2005-SC-0063-MR

DATE 11-23-05 EIA Grant, D.C.
APPELLANTS

SANDRA C. BROOKS AND
WILLIAM C. JACOBS

V. APPEAL FROM COURT OF APPEALS
2004-CA-001717
FAYETTE CIRCUIT COURT NO. 92-CI-02843

HON. GARY D. PAYNE, JUDGE,
FAYETTE CIRCUIT COURT AND

APPELLEES

LEXINGTON-FAYETTE URBAN COUNTY
HOUSING AUTHORITY

REAL PARTY IN INTEREST

MEMORANDUM OPINION OF THE COURT

AFFIRMING

This appeal is from a denial of a writ of prohibition in the Court of Appeals. The writ seeks to reverse the circuit judge's removal of post-judgment interest on a judgment in the Fayette Circuit Court.

In 1999, Brooks brought a successful action under the Kentucky Civil Rights Protection Act against the Lexington-Fayette Urban County Housing Authority. The judgment included post-judgment interest. The Court of Appeals reversed and vacated the judgment of the circuit court. On appeal, this Court affirmed in part, reversed in part, and remanded the case to the circuit court to reinstate the original judgment in favor of Brooks. Brooks v. Lexington-Fayette Urban County Housing Auth., 132 S.W.3d 790 (Ky. 2004).

On remand, the circuit judge entertained a motion by the Housing Authority to remove the post-judgment interest on the judgment based upon Kentucky Dept. of Corrections v. McCullough, 123 S.W.3d 130 (Ky. 2003). McCullough supra, held that a government agency is not subject to post-judgment interest under the KCRPA.

The circuit judge held a hearing on the motion and ruled to remove the post-judgment interest. Before he rendered a final judgment on the remand, Brooks filed an original action in the Court of Appeals for a writ of prohibition to prevent the circuit judge from removing the post-judgment interest. The Court of Appeals passed on the original action for thirty days and directed the circuit judge to issue a written order to memorialize the decision. The circuit judge then issued a written Opinion and Order and its Final Judgment. Upon the issuance of the final judgment of the circuit judge, the Court of Appeals denied the original action for the writ of prohibition due to lack of entitlement because it believed Brooks had an adequate remedy by immediately filing a notice of appeal. Brooks now appeals the denial of her writ.

Brooks contends that she is entitled to the extraordinary writ of prohibition because the circuit judge was acting outside of his jurisdiction when he granted the motion by the Housing Authority to remove the post-judgment interest from the judgment. She argues that he was outside of his jurisdiction because the amendment to the judgment exceeded the ten day limit as prescribed in Commonwealth v. Gross, 936 S.W.2d 85 (Ky. 1996). She alleges that the final judgment had been entered in 1999 and the amendment was nearly five years later, in 2004. Alternatively, Brooks claims that the circuit judge acted outside of his jurisdiction based upon the “law of the case” doctrine as this Court had affirmed the original judgment and remanded for reinstatement. She complains that because this Court did not convey the power to alter

the original judgment, the circuit judge was bound by the original judgment under the “law of the case” doctrine and acted outside of his jurisdiction when he altered the judgment which had been approved by this Court.

The analysis of this issue falls under the test recognized in Hoskins v. Maricle, 150 S.W.3d 1 (Ky. 2004), which restates the rule announced in the seminal case of Bender v. Eaton, 343 S.W.2d 799 (Ky. 1961), that a writ of prohibition 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. A writ of prohibition is an extraordinary remedy authorized by Sections 110 and 111 of the Kentucky Constitution. It may be used by a court in a discretionary manner. Generally, it may not be used as a substitute for the appellate process.

Here, the circuit judge decided to delete statutory judgment interest from the two final judgments affirmed by the Supreme Court. Clearly, the issue involved in this dispute is monetary. On appeal, it can be remedied by a court of appropriate jurisdiction by the imposition of interest or additional interest if any is found to be justified. Cf. Newell Enterprises, Inc. v. Bowling, 158 S.W.3d 750 (Ky. 2005).

Brooks has not shown that her remedy by appeal is inadequate or that there would be a miscarriage of justice in the absence of a writ to such a degree or under the circumstances previously outlined by this Court so as to require relief.

The decision of the Court of Appeals is affirmed.

All concur.

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