

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.

Supreme Court of Kentucky FINAL

2005-SC-0404-MR

DATE 1-12-06 ELLA Grawitt DC.

KENI LYNN CROSSFIELD (NOW WENDT)

APPELLANT

V.

REVIEW FROM COURT OF APPEALS
2005-CA-000576
GARRARD CIRCUIT NO. 02-CI-00090

C. HUNTER DAUGHERTY, JUDGE,
GARRARD CIRCUIT COURT

APPELLEE

AND

JOHN CROSSFIELD

REAL PARTY IN INTEREST

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Keni Lynn Crossfield (now Wendt), (mother), appeals from a Court of Appeals decision granting Appellee, John Crossfield, (father), relief in the nature of a Writ of Mandamus/Prohibition. The procedural history of this matter is as follows:

On June 20, 2003, the Garrard Circuit Court modified a custody arrangement between the parties by ordering the residence of their children to be with Appellant (mother). On appeal, the Court of Appeals reversed, and entered an order directing the Circuit Court to return the children to Appellee (father). Appellant (mother) filed a new motion with the Garrard Circuit Court, requesting a hearing to modify the existing custody arrangements, and/or set aside the existing decree pursuant to CR 60.02(d) or CR 60.02(f).

On March 15, 2005, Appellee (father) filed a Petition for Writ of Mandamus/Prohibition as an original action in the Court of Appeals. On March 18th, the Garrard Circuit Court entered an Order granting temporary custody to Appellant (mother). The Court of Appeals granted Appellee's (father) petition on May 4th, ordering the Circuit Court to vacate its order granting temporary custody to Appellant (mother), and to restore actual custody to Appellee (father). Appellant (mother) appealed to this Court.

The Appellant (mother) claims that the writ was improper because Appellee's (father) petition was filed prior to the Circuit Court's final order. We disagree because the writ petition did not originate as an appeal from the Circuit Court order. Rather, Appellee (father) petitioned for the writ as an original action in the Court of Appeals, requesting that it compel the trial court to obey a previous Court of Appeals order. As such, it does not matter whether or not the Circuit Court order was final at the time the petition was filed.

Appellant (mother) also argues that a writ of mandamus is an inappropriate remedy as a matter of law if the Circuit Court has subject matter jurisdiction to modify a custody arrangement and the proper affidavits are filed. Appellant (mother) is incorrect in this assertion, and her reliance upon Petry v. Cain, 987 S.W.2d 786 (Ky. 1999), is misplaced. This Court reviews decisions to grant writs of prohibition/mandamus under an abuse of discretion standard. Haight v. Williamson, 833 S.W.2d 821, 823 (1992). Finding no abuse of discretion, we affirm the Court of Appeals.

All concur.

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