

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

Supreme Court of Kentucky

FINAL

2007-SC-000362-MR

DATE 3-20-08 EJA Growth PC.

FINANCE AND ADMINISTRATION
CABINET

APPELLANT

V.

ON APPEAL FROM COURT OF APPEALS
CASE NUMBER 2007-CA-000395-OA
CLAY CIRCUIT COURT NO. 05-J-000138-002

HON. GENE CLARK, JUDGE,
CLAY CIRCUIT COURT
FAMILY COURT DIVISION

AND

KENNETH S. STEPP
(REAL PARTY IN INTEREST)

APPELLEES

MEMORANDUM OPINION OF THE COURT

REVERSING AND REMANDING

This is a matter of right appeal from the denial of a petition for writ of prohibition seeking to prevent the trial court from ordering that the account of the Finance and Administration Cabinet (the "Cabinet") be garnished to pay a \$500 court-appointed counsel fee ordered pursuant to KRS 620.100. Under KRS 620.100(1)(b), the Clay Family Court had jurisdiction to enter the order of attorney's fees, but under KRS 44.020(2), did not have jurisdiction to enforce the order and compel the Cabinet to pay via the order of garnishment. The Franklin Circuit Court has exclusive jurisdiction to compel claims against the State Treasury. KRS 44.020(2). Accordingly, the Cabinet is

entitled to CR 76.36 relief, and we reverse and remand to the Court of Appeals for entry of the writ of prohibition.

On February 23, 2006, attorney Kenneth Stepp was appointed by the Clay Family Court to serve as court-appointed counsel (“CAC”) for Evelyn Griffith, mother of M.G., in a dependency, neglect and abuse case, Case No. 05-J-00138-002. On that same date, Stepp was appointed CAC for Evelyn Griffith, mother of J.E., in a dependency, neglect and abuse case, Case No. 05-J-00139-002. Both matters were disposed of on March 30, 2006. Stepp thereafter submitted two separate affidavits of counsel, one for services rendered in Case No. 05-J-00138-002 and one for Case No. 05-J-00139-002, which were entered of record on April 18, 2006. Stepp was seeking the full \$500 fee allowed by KRS 620.100(1) in each case. Two separate Orders For Attorney’s Fees, allowing \$500 in fees for each case, were signed by the Clay Family Court and entered on April 18, 2006. Both orders state that the fees were to be paid by the Finance and Administration Cabinet, and the orders reflect that the Finance and Administration Cabinet was sent a copy of the orders.

On July 5, 2006, the Cabinet remitted a payment of \$500 to Stepp, along with a copy of a letter it had sent to the Clay Family Court Judge explaining that it viewed Stepp’s court-appointed representation of Evelyn Griffith in both cases as a single proceeding, thus the maximum it could pay Stepp was \$500 under KRS 620.100(1) and CR 17.03(5). On August 29, 2006, an Order of Garnishment was filed on Farmer’s Bank & Capital Trust Company (“Farmer’s Bank”), the Cabinet’s depository bank, for the outstanding \$500 judgment. Subsequently, Stepp filed a Motion For More Definite Statement By Garnishee and For Money Judgment Against Garnishee in the Clay Family Court. On October 23, 2006, the Cabinet received notice of the hearing on the

above motion set for October 26, 2006. The Cabinet thereafter filed a Response To Notice of Hearing wherein it set forth its position that the Family Court could not order payment of more than \$500 in attorney's fees for one proceeding under KRS 620.100 and CR 17.03, and that the funds of the Cabinet are not subject to garnishment.

The hearing on the matter was held on December 14, 2006, although the videotape of the hearing is not contained in the record before us. On February 7, 2007, the Clay Family Court entered an Order To Pay, requiring the Cabinet's account at Farmer's Bank to be garnished in the amount of \$549 to satisfy the outstanding judgment of April 18, 2006 and for court costs.

On February 16, 2007, the Cabinet filed a Petition for Writ of Prohibition with the Court of Appeals, seeking to stop the Clay Family Court from ordering the illegal garnishment of the Cabinet's funds. The Court of Appeals denied the Cabinet's petition for CR 76.36 relief on May 15, 2007. This matter of right appeal followed.

The Court of Appeals denied the Cabinet CR 76.36 relief because the Cabinet failed to file an appeal from either the April 18, 2006 or the February 7, 2007, family court orders, which it adjudged would have provided the Cabinet an adequate remedy in this case. A writ of prohibition is an extraordinary remedy, "one which should be used only under the most exceptional circumstances." Seymour Charter Buslines, Inc. v. Hopper, 111 S.W.3d 387, 388 (Ky. 2003) (citing Shobe v. EPI Corp., 815 S.W.2d 395 (Ky. 1991)).

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 by 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.

Hoskins v. Maricle, 150 S.W.3d 1, 10 (Ky. 2004).

The Cabinet first argues on appeal that the family court acted outside its jurisdiction when it ordered the Cabinet to pay the \$500 in attorney's fees and ordered that the Cabinet's account be garnished. Clearly, the Clay Family Court had jurisdiction to enter the order of attorney's fees for Stepp as a CAC in a dependency, neglect and abuse case. KRS 23A.100(2)(c); Section 112(6) of the Constitution of Kentucky; KRS 620.100(1)(b). However, under KRS 44.020(2), which neither party has cited, the Clay Family Court did not have jurisdiction to enforce the order against the Cabinet and compel payment through the garnishment order because only the Franklin Circuit Court has the authority to compel payment of any claims against the Commonwealth. KRS 44.020; Greene v. Wolf, 175 Ky. 58, 193 S.W. 1048, 1049 (1917).

KRS 44.020(2), as it existed in 2006,¹ stated as follows:

The order of any court authorized by law to approve and allow fee-bills, settlements, credits, charges, and other claims against the State Treasury shall not be treated as a judgment, or made conclusive against the state, but shall only be regarded as prima facie evidence of the correctness and legality of the fee-bill, settlement, credit, charge, or claim. The Department for Local Government, *if it believes the fee-bill, settlement, credit, charge, or claim to be fraudulent, erroneous, or illegal, may, upon the advice of the Attorney General, refuse to pay and may contest the claim in the Franklin Circuit Court, which shall have exclusive jurisdiction of all actions against the Department for Local Government to compel the payment of claims against the State Treasury.*

(emphasis added). KRS 44.020 applies to the Cabinet because KRS 44.020 has been previously applied to departments of the Cabinet. See Revenue Cabinet v. Barbour, 836 S.W.2d 418, 422 (Ky. App. 1992) (applying KRS 44.020 to the Revenue Cabinet's

¹ Effective June 26, 2007, KRS 44.020(2) was amended to substitute the Governor's Office for Local Development for the Department for Local Government.

challenge of attorney fees assessed against them). The plain language of the statute gives the Cabinet the ability to contest any court order allowing fees in the Franklin Circuit Court. See Ky. OAG 78-249; but see Barbour, 836 S.W.2d at 422 (holding that since contested attorney fees were ordered to be paid by the Franklin Circuit Court, it would be unreasonable for that court to review its own order, and hence, in that situation, the Court of Appeals was the proper venue of appeal). However, this statute not only tells the Cabinet in what venue it may contest court orders for fees, but it also gives the Franklin Circuit Court exclusive jurisdiction over any attempt by another party to compel the Cabinet to pay fees.

In Greene, it was held that the legislative intent behind the creation of Ky. St. § 340(a) was to “confer exclusive jurisdiction upon the Franklin Circuit Court in all proceedings against the auditor to *compel* him to issue his warrant against the treasury.” 193 S.W. at 1049. It is important to note that the language of Ky. St. § 340(a) is nearly identical to the language of KRS 44.020(2). Thus, logically since the Franklin Circuit Court has exclusive jurisdiction to compel claims against the State Treasury, no other circuit court has the jurisdiction to compel the Cabinet to pay fees. See Greene, 193 S.W. at 1050 (prohibiting the Campbell Circuit Court judge from issuing any order to compel the state auditor to pay an allowance made to an incompetent because he is without jurisdiction to make such an order).

The rationale used for this conclusion in Greene shows the wisdom of such a rule.

If this were not true, circuit courts throughout the state could proceed, in one way or another, against the auditor to compel him to issue warrants upon the treasury at any and all times, and thus force him to travel to remote parts of the state to respond to or defend such proceedings, and in many instances . . . county courts could do likewise . . . Such

consequences were never intended. He is required to keep his office at the seat of government of the state, where he is presumed to remain, and where he may be readily found, and can, with the least inconvenience, perform such services in watching after and protecting the treasury from unjust claims, for which his office, in a large measure at least, was created. If he should see proper to contest a claim against the treasury under the authority vested in him by subsection 1 of section 340a, supra, howsoever small or insignificant it might be, if the court making the allowance should have jurisdiction to compel him to issue a warrant for the amount, he would necessarily be also compelled, in many instances, to pay the claim without question rather than contest it at such heavy expense of both time and money. The state would thus lose the benefit of his watchfulness, judgment, and care in protecting its treasury, and we are convinced that to prevent such consequences the section conferring jurisdiction upon the Franklin circuit court was meant to confer upon that court *exclusive* jurisdiction of such matters.

Id. at 1049-50. Even today, like ninety years ago, allowing circuit courts to compel the Cabinet to pay fees would greatly burden the Commonwealth and its ability to process court-ordered fees. If a circuit court alone could compel the Cabinet to defend its interest, it would have to send attorneys to numerous different jurisdictions. This is especially burdensome considering the vast number of payment requests the Cabinet processes each and every month. This burden upon the Cabinet would hurt the Commonwealth's ability to watch over the treasury and would ultimately cost taxpayers. Consolidating all disputes regarding the Cabinet's payment of court-ordered fees in the Franklin Circuit Court aids in the efficient operation of state government and allows the Cabinet to conveniently defend itself in such actions.

Since it has been established that the Clay Family Court had no jurisdiction to compel the Cabinet to pay the ordered attorney fees and there was no remedy by application to an intermediate court, CR 76.36 relief should have been granted to the Cabinet . See Hoskins, 150 S.W.3d at 10; Greene, 193 S.W. at 1050 (granting a writ of

prohibition against a circuit court judge who attempted to compel the auditor to pay court ordered fees). Accordingly, the order denying the petition for writ of prohibition is reversed and the matter is remanded to the Court of Appeals for entry of the writ of prohibition consistent with this opinion.

All sitting. All concur.

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