

**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**NOT TO BE PUBLISHED OPINION**

**THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.**

RENDERED: MARCH 18, 2010

NOT TO BE PUBLISHED

Supreme Court of Kentucky

2009-SC-000636-MR

DATE 4-8-10 Kelly Kleber D.C.  
APPELLANT

ANTHONY L. RODEBACK

ON APPEAL FROM COURT OF APPEALS  
V. CASE NO. 2009-CA-001051-OA  
SHELBY CIRCUIT COURT CASE NOS. 08-CI-00554 AND 08-CI-00773

HON. CHARLES R. HICKMAN, JUDGE,  
SHELBY CIRCUIT COURT

APPELLEE

MICHAEL L. RICHARDSON, ANGELA  
G. TAULBEE, SHANAN H. STRANGE,  
LINDA BALLARD AND EAST  
KENTUCKY POWER CO-OP

REAL PARTIES IN INTEREST

**MEMORANDUM OPINION OF THE COURT**

**AFFIRMING**

Appellant, Anthony L. Rodeback, appeals from a decision of the Court of Appeals denying a petition for a writ of prohibition. By the petition, Rodeback sought to prohibit enforcement of an order of the Shelby Circuit Court requiring him to travel to Shelby County for a deposition. Because Rodeback has failed to demonstrate entitlement to the extraordinary remedy of a writ, the decision of the Court of Appeals is affirmed.

The underlying action arises from an automobile accident which occurred in Shelby County, Kentucky. Rodeback's truck collided with an automobile operated by his co-defendant/real party in interest, Michael L.

Richardson. Richardson's vehicle then collided with a third automobile occupied by plaintiffs/real parties in interest, Angela G. Taulbee, Shanan H. Strange and Linda Ballard. All parties are Kentucky residents except Rodeback, who resides in Johnson City, Tennessee.

As the case proceeded towards trial, the parties agreed to schedule the depositions of Ballard, Strange and Richardson in Shelby County. Richardson's counsel requested that Rodeback appear at the same location for a deposition. Rodeback objected, arguing that an out-of-state defendant cannot be required to appear in the venue jurisdiction for purposes of a deposition. Richardson filed a motion to compel, which the Shelby Circuit Court granted.

Rodeback then petitioned the Court of Appeals for a writ of prohibition, arguing that the Shelby Circuit Court acted outside its jurisdiction in issuing the order to compel his appearance in Kentucky for the deposition. The Court of Appeals denied the petition, determining that Rodeback had failed to demonstrate that the trial court was acting outside its jurisdiction, and that he had failed to show that great injustice or irreparable injury would result. Rodeback appealed as a matter of right to this Court.

Again, we must emphasize that a writ of prohibition is extraordinary in nature, entertained in limited circumstances and granted sparingly. Accordingly, the standard by which we consider such petitions is strict:

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.

*Hoskins v. Maricle*, 150 S.W.3d 1, 10 (Ky. 2004). The decision to issue a writ is “always discretionary, even when the trial court was acting outside its jurisdiction.” *Id.* at 9. Thus, even when the criteria set forth in *Hoskins* have been satisfied, the grant or denial of the petition is not mandatory. *Cox v. Braden*, 266 S.W.3d 792, 797 (Ky. 2008).

This is not an extraordinary case warranting interference with the circuit court’s administration of justice. Rather, the matter involves a simple discovery dispute and the possible inconvenience of a single litigant. In essence, it is a de facto interlocutory appeal. *See Cox*, 266 S.W.3d at 795 (recognizing an “increasing, undesired trend” of using a writ petition as a de facto interlocutory appeal).

Because this is not a case of an extraordinary or exceptional nature, we need not address the merits of Rodeback’s jurisdictional claim. *See Independent Order of Foresters v. Chauvin*, 175 S.W.3d 610, 617 (Ky. 2005). The remedy of a writ of prohibition is not appropriate under these circumstances and, therefore, the Court of Appeals did not abuse its discretion in denying the petition.

Cunningham, Noble, Schroder, Scott and Venters, JJ., concur. Minton, C.J.; and Abramson, J., concur in result only.

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