

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NOT TO BE PUBLISHED OPINION

**THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED."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THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE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UNPUBLISHED KENTUCKY APPELLATE DECISIONS,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BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED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

2011-SC-000752-MR

TIFFANY MOREFIELD

APPELLANT

V.

ON REVIEW FROM COURT OF APPEALS
CASE NO. 2011-CA-000419-MR
CLARK FAMILY COURT NO. 08-J-00097-001

HON. JEFFREY M. WALSON, JUDGE
CLARK FAMILY COURT; AND
BRIAN N. THOMAS, CLARK COUNTY ATTORNEY

APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

This case arises out of a petition filed by the Cabinet for Health and Family Services (hereinafter "Cabinet") against Appellant, Tiffany Morefield, in the Clark County Family Court. Appellant was cited on March 21, 2008 for educational neglect of her minor child K.W., who was habitually tardy and had repeated unexcused absences from school. On multiple occasions, the Cabinet attempted to meet with Appellant in her home in order to prepare a Predisposition Investigation Report, but such attempts were unsuccessful. The disposition hearing was finally held on October 2, 2008, after Appellant met the social worker at the Cabinet's office. After the hearing, the family court entered an order requiring that K.W. not have any additional unexcused absences or tardiness from school, and that Appellant cooperate with the Cabinet.

Following the order, the Clark County Attorney was notified that K.W. had been tardy from school on additional days and had also been absent without excuse on more occasions. Eventually, on December 3, 2010, the Clark County Attorney filed a motion for contempt against Appellant for failing to comply with the family court's order requiring an in-home visit by the Cabinet in advance of the disposition hearing. Appellant was arrested on March 23, 2011. A disposition hearing was finally held on April 21 and 22, 2011, and the family court adopted the recommendations of the Cabinet and imposed a fine of \$109 for Appellant's contempt.

Appellant then sought relief with the Court of Appeals and filed a *pro se* petition for a writ of prohibition and a motion for intermediate relief pursuant to CR 76.36(4). Appellant requested a stay of the contempt hearing and of the enforcement order for the home visits by the Cabinet. The Court of Appeals denied both the motion for intermediate relief and the petition for a writ of prohibition, stating that the petition was moot since the times for the contempt hearing and home visits had already passed prior to the filing of the petition. Appellant now appeals that decision to this Court.

We generally review Court of Appeals' decisions to grant or deny a writ under the abuse of discretion standard, unless they involve a question of law. *Rehm v. Clayton*, 132 S.W.3d 864, 866 (Ky. 2004). Appellant contends that the Court of Appeals erred in its finding that the family court had continuing jurisdiction over this case and the motion for contempt filed by the Clark County Attorney. In this case, whether the family court was acting within its

jurisdiction is a question of law. *Grange Mutual Insurance Co. v. Trude*, 151 S.W.3d 803, 810 (Ky. 2004). Accordingly, we review it *de novo*.

The threshold requirements for the issuance of a writ of prohibition were set out in *Hoskins v. Maricle*, 150 S.W.3d 1, 10 (Ky. 2004):

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. (Emphasis in original).

Appellant fails to meet the standards for issuance of either class of writ. This matter stems from a petition filed against Appellant for educational neglect, and the family court has continuing jurisdiction over educational neglect cases. KRS 23A.100; KRS 610.010. Also, a writ shall not issue to prevent a contempt hearing since a finding of contempt may be appealed. *Newell Enterprises, Inc. v. Bowling*, 158 S.W.3d 750, 757 (Ky. 2005). Further, Appellant has presented no evidence of an immediate and irreparable injury that would result if a writ is not issued.

The *pro se* pleadings of Appellant also allege that the home visits ordered by the family court violate her Fourth Amendment rights against unreasonable search and seizure, and that the family court should be enjoined from so ordering. However, Appellant fails to provide any support for this proposition. For this reason, this argument is not properly before us. *See Pierson v. Coffey*,

706 S.W.2d 409, 413 (Ky.App. 1985).

For the foregoing reasons, we affirm the decision of the Court of Appeals and deny Appellant's petition for a writ of prohibition.

All sitting. All concur.

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