

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED."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THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE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UNPUBLISHED KENTUCKY APPELLATE DECISIONS,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BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED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

2012-SC-000117-MR

OHIO VALLEY BISTROS, INC.,
D/B/A T.G.I. FRIDAY'S; AND
THE BISTRO GROUP,
D/B/A T.G.I. FRIDAY'S

APPELLANTS

V.

ON APPEAL FROM COURT OF APPEALS
CASE NO. 2011-CA-002300-OA
MCCRACKEN CIRCUIT COURT NOS.
09-CI-01400 AND 11-CI-00633

HONORABLE CRAIG Z. CLYMER,
JUDGE, MCCRACKEN CIRCUIT COURT

APPELLEE

WILLIAM GERALD WATSON, ET AL

REAL PARTIES IN INTEREST

MEMORANDUM OPINION OF THE COURT

AFFIRMING

On December 26, 2008, William Gerald Watson, a real party in interest, was injured in a single car accident while riding as a passenger in a car driven by Joseph Taylor. The two had been drinking that evening prior to the time of the accident. Watson filed suit in McCracken Circuit Court under Kentucky's Dram Shop Statute (KRS 413.241). The suit was filed against Appellant, Ohio Valley Bistros, Inc., d/b/a T.G.I. Friday's, and other establishments that had allegedly served Taylor alcohol that evening.

On July 20, 2011, Watson filed supplemental interrogatories and requests for additional documents. Ohio Valley Bistros objected and did not produce the requested documents. As a result, on September 23, 2011, Watson filed a motion to compel the production of all employee files and managers' logs for 2008 and 2009; video recordings from a time period in 2011; certain customer information for individuals present at T.G.I. Friday's in Paducah on the night of the accident; information regarding past corporate policies and procedures utilized by Ohio Valley Bistros; and certain financial information. The trial court granted Watson's motion to compel in its entirety. Appellant then filed this petition for a writ of prohibition to prevent the trial court from enforcing the discovery order. The Court of Appeals denied the petition, finding that Ohio Valley Bistros would have an adequate remedy on appeal, and that no irreparable injury was demonstrated. For the reasons stated below, we affirm.

Writs of prohibition are "extraordinary remed[ies] and we have always been cautious and conservative both in entertaining petitions for and in granting such relief." *Bender v. Eaton*, 343 S.W.2d 799, 800 (Ky. 1961). The standard for issuance of a writ of prohibition is well established:

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).

Further, under the certain special cases exception, the requirement that the petitioner show irreparable harm may be waived where “a substantial miscarriage of justice will result if the lower court is proceeding erroneously, *and* correction of the error is necessary and appropriate in the interest of orderly judicial administration.” *Bender* at 801 (emphasis in original).

Ohio Valley Bistros argues that it should not be compelled to produce its financial information because that information is irrelevant and disclosing it will shift the focus of the litigation, distract from the central issue, and violate its due process rights. Appellant urges us to issue a writ under the second class, or in the alternative, under the certain special cases exception per *Bender*. We decline to issue a writ under either justification, however, because we find that the trial court is not acting erroneously or, if acting erroneously, there is an adequate remedy on appeal and there is no irreparable harm.

Ohio Valley Bistros asserts that the only arguable relevance of its financial condition to this case is with respect to the issue of punitive damages; and it is uncertain, under recent case law, whether punitive damages are recoverable under KRS 413.241. More specifically, Ohio Valley Bistros points to an alleged “decisional conflict” between *Jackson v. Tullar*, 285 S.W.3d 290 (Ky. App. 2007) and *Taylor v. King*, 345 S.W.3d 237 (Ky. App. 2010).

The Court of Appeals, in *Jackson*, found that KRS 413.241(1) expressly denied the recovery of punitive damages. The court, in *Taylor*, did not dispute the holding in *Jackson*, but found the statute’s prohibition on the recovery of

punitive damages to be unconstitutional. The *Jackson* court did not comment on the constitutionality of the statute, as that issue was not before it. We have never addressed the holdings in either *Jackson* or *Taylor* and how they might conflict.

In this case, the trial court granted Watson's motion to compel, pursuant to CR 26.02(1), which states:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence.

It is possible that the issue of punitive damages will arise at trial. One factor for the jury to consider in awarding punitive damages is the profitability of the defendant's misconduct. KRS 411.186(2)(c). Ohio Valley Bistros' financial information might be relevant to this fact. Whether to grant or deny a writ is within the discretion of the lower court. *Grange Mut. Ins. Co. v. Trude*, 151 S.W.3d 803, 810 (Ky. 2004). Since the law is currently unsettled as to the availability of punitive damages in this case, we cannot say that the trial court either acted erroneously or abused its discretion.

Even if erroneous, we do not find that Ohio Valley Bistros would lack an adequate remedy at law or that irreparable injury would occur. Those issues discussed herein could be fully briefed and argued on appeal in the event of an award.

For all of the foregoing reasons, the opinion of the Court of Appeals is hereby affirmed.

Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., concur. Schroder, J., not sitting.

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