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NOT TO BE PUBLISHED OPINION

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THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE
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ACTION.

Supreme Court of Kentucky

2012-SC-000287-MR

AMIEE ANDREE

APPELLANT

V. ON APPEAL FROM COURT OF APPEALS
CASE NO. 2012-CA-000193-OA
CLINTON CIRCUIT COURT NO. 10-CI-00267

HON. REED RHORER,
SPECIAL JUDGE, CLINTON CIRCUIT COURT; AND
JAKE STATON, CLINTON COUNTY CIRCUIT CLERK

APPELLEES

AND

MICHAEL ANDREE

REAL PARTY IN INTEREST

MEMORANDUM OPINION OF THE COURT

AFFIRMING

The Appellant, Amiee Andree, appeals as a matter of right from an Order of the Court of Appeals denying her petition for an extraordinary writ and her motion for immediate relief. The Appellant seeks the writ for the following purposes: (1) to require the trial court to vacate all orders issued by Special Judge Reed Rhorer, a Senior-Status Judge, in her case pending in Clinton Circuit Court, (2) to mandate Special Judge Rhorer recuse from her case, (3) to require the trial court issue a factual finding that Kentucky does not have jurisdiction, (4) to require the Clinton County Circuit Clerk to provide a copy of the order granting jurisdiction to Special Judge Rhorer, and (5) to require the

Clinton County Circuit Clerk to secure the records in her case which she argues are in the possession of Special Judge Rhorer. The Appellant also sought emergency relief to hold in abeyance all orders issued by Special Judge Rhorer, to reinstate child support payments to her by Real-Party-in-Interest Michael Andree, and to require the Clinton County Circuit Clerk to reclaim possession of the record. Having reviewed the record, we opine that the Court of Appeals correctly concluded that the extraordinary writ was not available and that Appellant's motion for emergency relief was moot. Hence, we affirm.

I. Background

The record reveals that Appellant Amiee Andree and Real-Party-in-Interest Michael Andree are married and that on December 17, 2010, Michael filed a Petition for Dissolution of Marriage in the Clinton Circuit Court, Case Number 10-CI-00267, which was assigned to Judge Eddie Lovelace. On January 4, 2011, the court entered a temporary agreed order which provided that Michael and Amiee would share temporary legal custody of their two children with Amiee as primary physical custodian and with visitation for Michael on alternating weekends and rotating holidays. The order also provided, among other things, a "mutual temporary restraining order" between the parties, with Amiee agreeing to dismiss a pending domestic violence action pending in Clay County, Tennessee.

On August 15, 2011, ruling upon an Emergency Motion for Protection filed by Michael, Judge Lovelace ordered the parties' two minor children into

the custody of the Cabinet for Health and Family Services (the Cabinet). Thereafter, Amiee filed an original action with the Court of Appeals, case number 2011-CA-001532, petitioning for a writ of prohibition. On October 31, 2011, Michael filed a motion with the Clinton Circuit Court to suspend child support payments and for reimbursement of child support payments paid to Amiee while the two minor children were not in her care, but noted within the motion that the circuit court at that time did not have jurisdiction to terminate or suspend child support because Amiee's petition for a writ of prohibition was still pending at the Court of Appeals. On November 15, 2011, the Court of Appeals granted Amiee's requested writ and vacated Judge Lovelace's August 15, 2011, order removing the children from her custody. Although the Court of Appeals granted Amiee's requested writ, on November 28, 2011, Amiee filed a Motion to Reconsider, in which she argued that, while vacating Judge Lovelace's order, the Court of Appeals erroneously found that Judge Lovelace was nevertheless "acting within procedural mandates."

On November 21, 2011, Judge Lovelace recused from the case *sub judice*, and an order was entered certifying the need for a special judge to be appointed. Special Judge Rhorer was assigned by the Chief Justice as Special Senior Judge of the Clinton Circuit Court to hear and decide the present case until final determination. A second order was entered dated January 3, 2012, correcting an unspecified error in the original assignment order.

While this divorce case was pending in Kentucky, on December 2, 2011,

Judge James D. White, Jr., a Special Session Judge in Clay County, Tennessee, entered an Order transferring Amiee's application for an order of protection against Michael from that court to the circuit court of Clinton County, Kentucky. In this Order, Judge White, Jr., explained that, because Clinton Circuit Court already had jurisdiction of the divorce proceedings, Amiee's petition for an order of protection should also be heard by that court.

On December 27, 2011, Michael filed a re-notice of the previously filed motions and a new motion for make-up visitation and sanctions in the Clinton Circuit Court, arguing that Amiee had refused to allow Michael access to the children for visitation since November 2011 when they were returned to her custody.

Special Judge Rhorer held a hearing on January 3, 2012, to address the various motions filed by Michael, and Amiee's motion to strike all pleadings by Terran Cross Helm¹ and her Petition for an Order of Protection and Order for Hearing, transferred from Clay County, Tennessee by Judge White, Jr. Michael was present at the hearing and represented by counsel, however, Amiee did not attend. After reviewing the record and taking Michael's testimony, Special Judge Rhorer entered an Order which, among other things, dismissed Amiee's petition for a protection order with prejudice, credited Michael with \$830.50 towards future child support payments as a result of payments made to Amiee while the children were not in her custody, scheduled make-up visitation for

¹ Terran Cross Helm is one of the attorneys representing Michael.

Michael, set a final hearing date of February 10, 2012,² and held Amiee in contempt for failing to abide by the January 4, 2011, and June 4, 2011, orders of the court since November 25, 2011, by refusing to deliver the parties' children for Michael's alternate weekend visitation.

Amiee filed a petition for a writ of mandamus and a writ of prohibition with the Court of Appeals, arguing that the Clinton Circuit Court was acting without jurisdiction. She also filed a motion for emergency relief under Civil Rule 76.36(4). The Court of Appeals denied Amiee's petition for a writ and her motion for emergency relief, opining that the circuit court retained subject matter jurisdiction over the pending divorce action and that Amiee failed to demonstrate the lack of an adequate remedy by appeal. The court also noted that, in fact, Special Judge Rhorer had already scheduled a final hearing which in and of itself provided an adequate remedy for many of Amiee's complaints.

Amiee then appealed to this Court as a matter of right. CR 76.36(7)(a); Ky. Const. § 115.

II. Analysis

Amiee argues that the Court of Appeals erred in denying her petition for a writ of prohibition or mandamus. This Court and its predecessor have noted repeatedly that the writ process requires a substantial showing of certain prerequisites before a court should look to the merits of the petitioner's claim of

² The final hearing in this matter was stayed pending this appeal.

legal error.³ See, e.g., *Hoskins v. Maricle*, 150 S.W.3d 1, 18 (Ky. 2004) (“In other words, only after determining that the prerequisites exist will the court decide whether an error occurred for which a writ should issue.”); *Bender v. Eaton*, 343 S.W.2d 799, 801 (Ky. 1961) (“This is a practical and convenient formula for determining, *prior to deciding the issue of alleged error*, if petitioner may avail himself of this remedy.”).

“[W]e have always been cautious and conservative both in entertaining petitions for and in granting such relief.” *Bender*, 343 S.W.2d at 801. A writ is “an extraordinary remedy, available only in two instances: 1) when a lower court is proceeding or is about to proceed outside its jurisdiction and there is no remedy through an application to an intermediate court; or 2) the lower court is about to act incorrectly, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise, and great injustice or irreparable injury will result.” *Ally Cat, LLC v. Chauvin*, 274 S.W.3d 451, 456-57 (Ky. 2009) (quoting *Hoskins*, 150 S.W.3d at 10). It is with these two classes of writs in mind that we examine Amiee’s claims.

³ Amiee’s claim of legal error is that she was denied due process of law as a result of a conspiracy she claims is involved in the removal of out-of-state children in domestic cases pending in the courts of the Commonwealth of Kentucky and their placement in Kentucky foster care homes for the purpose of meeting an alleged quota of foster care children. Amiee argues that there is a quota of foster care children needed by the Cabinet in order for the Cabinet to receive “federal title money,” and that due to budget constraints, all of the branches of government in the Commonwealth are involved in conspiring to illegally remove out-of-state resident children for a fundraising purpose or they are otherwise involved in the cover-up of such removals. She specifically blames “all the members of the Kentucky Bar Association, the Cabinet for Health and Family service employees, the elected officials [judges and clerks of court], County attorneys, the Citizens Foster Care Review Board, and Administrative Office of Courts[?] employees.”

When reviewing a denial of a writ of prohibition in the first class, namely, that the lower court is alleged to be acting outside its jurisdiction, the proper standard is *de novo* review because jurisdiction is generally only a question of law. *Grange Mut. Ins. Co. v. Trude*, 151 S.W.3d 803, 810 (Ky. 2004). In deciding whether the lower court was acting within or outside of its *jurisdiction* for the purposes of determining the availability of a writ in the first class of cases, the appropriate inquiry is whether the lower court has *subject matter jurisdiction*. See, e.g., *Manning v. Baxter*, 136 S.W.2d 1074 (Ky. 1940); *Watson v. Humphrey*, 170 S.W.2d 865, 866-67 (Ky. 1943).

It is clear beyond measure that the Clinton Circuit Court had subject matter jurisdiction of the divorce action *sub judice*. In Kentucky, circuit courts are courts of general jurisdiction with a wide range of authority over various types of cases. Kentucky Constitution § 112(5) states: "The Circuit Court shall have original jurisdiction of all justiciable causes not vested in some other court. It shall have such appellate jurisdiction as may be provided by law." See also KRS 23A.010. This provision imbues the circuit courts with the general power to determine all matters of controversy arising under common law or equity, or by reason of statute or the constitution, unless the constitution requires that the matter be resolved by another body of the government or another court. In other words, the circuit court has extensive subject matter jurisdiction over all types of cases in common law and equity flowing directly from and conferred by the constitution that are not subject to limitation or

infringement by statutes enacted by the legislature. When the legislature does not specifically assign jurisdiction of a particular matter to the district court, jurisdiction rests in the circuit court. *Hyatt v. Commonwealth*, 72 S.W.3d 566, 577 (Ky. 2002).

Moreover, the legislature has assigned jurisdiction of divorce and custody matters to the circuit courts. See KRS 403.010 (“[C]ourts having general jurisdiction may grant a divorce for the cause set out in this chapter”); KRS 403.140(1) (“The Circuit Court shall enter a decree of dissolution of marriage . . .”). In the present case, the Clinton Circuit Court would certainly have had subject matter jurisdiction over the divorce and custody proceedings originally filed by Michael in December 2010. This jurisdiction would have continued even though Amiee and the children relocated to another state, as under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the state having original jurisdiction over a custody matter retains exclusive, continuing jurisdiction over all custody matters even when the child or children have acquired a new home state as long as the child and at least one parent maintains substantial connections with the state. KRS 403.824.

Despite Amiee’s allegation that this Kentucky circuit court illegally robbed Tennessee of its jurisdiction in her petition for a protection order filed in Tennessee, the record reveals that the Tennessee courts, in fact, transferred her petition to the Clinton Circuit Court in Kentucky. It is evident that, during the course of adjudicating divorce and custody matters, the presiding circuit

court is also granted subject matter jurisdiction to adjudicate issues of domestic violence and to issue temporary injunctions and restraining orders. See KRS 403.160(3)-(6); KRS 403.725(4). Therefore, the circuit court also had subject matter jurisdiction of the transferred petition for an order of protection.

Furthermore, Special Judge Rhorer did not, as Amiee alleges, “grant himself jurisdiction.” Special Judge Rhorer was duly assigned to sit as a Special Senior Judge of the Clinton Circuit Court by Chief Senior Status Judge Joseph Lambert, to hear and decide the present case after Judge Lovelace’s recusal. Such an assignment was made pursuant to the June 27, 2008, Order of Chief Justice John D. Minton, Jr.,⁴ under Section 110(5)(b)⁵ of the Kentucky Constitution. Although Amiee argues that only Chief Justice Minton may make a Special Judge assignment, this Court has previously explained that because Section 110(5)(b) of the Kentucky Constitution grants the Chief Justice the authority to “appoint such administrative assistants as he deems necessary,” the Chief Justice’s appointment of “a Chief Senior Status Judge as an ‘administrative assistant’ to assist in the administration of the Senior Status

⁴ On June 27, 2008, Chief Justice Minton issued an Order appointing Joseph E. Lambert the Chief Senior Status Judge and gave to him the authority to “assign Senior Status Judges or Retired Judges to sit in any court of the Commonwealth except the Supreme Court,” subject to the supervision and control of the Chief Justice.

⁵ Section 110(5)(b) of the Kentucky Constitution provides that:

[t]he Chief Justice of the Commonwealth shall be the executive head of the Court of Justice and he shall appoint such administrative assistants as he deems necessary. He shall assign temporarily any justice or judge of the Commonwealth, active or retired, to sit in any court other than the Supreme Court when he deems such assignment necessary for the prompt disposition of causes. . . .

Judge Program, including the appointments of Senior Judges to particular courts or cases, fits comfortably within this constitutional provision.” *Sanders v. Commonwealth*, 339 S.W.3d 427, 432 (Ky. 2011).

Amiee’s final argument concerning the circuit court’s jurisdiction is that, because she filed a petition to reconsider after the Court of Appeals granted her first petition for a writ of prohibition and vacated Judge Lovelace’s August 15, 2011, circuit court order,⁶ the Court of Appeals retained exclusive jurisdiction and the circuit court was without authority to adjudicate in this case. Amiee’s argument is without merit. Under CR 76.38(1), “all orders of an appellate court, including those in original proceedings under Rule 76.36, are effective upon entry and filing with the clerk.” Thus, the Court of Appeals order granting a writ of prohibition in case number 2011-CA-001532 was effective upon its entry and filing with the clerk on November 15, 2011. At that time, the circuit court could proceed to resume adjudicating the remaining issues. Even though Amiee filed a petition to reconsider the order granting the writ under CR 76.38(2), that rule provides that while the Court of Appeals *may* suspend the effectiveness of the order in question pending disposition of the motion to reconsider, such a suspension of the effectiveness of the order is neither *automatic* nor *required*. In fact, the rule provides that the order is effective unless the appellate court, at its discretion, suspends its effectiveness. The Court of Appeals did not choose to exercise its discretion to suspend the effectiveness of the November 15, 2011, order in the instant case, and

⁶ Case number 2011-CA-001532.

therefore, at that time, the circuit court would have been empowered to continue proceedings consistent with the order of the Court of Appeals, including adjudicating the remaining claims in the matter.

We now turn to the issue of whether the second class of writ was available. When reviewing a denial of a writ of prohibition in the second class, where the lower court is alleged to be about to act incorrectly, although within its jurisdiction, the proper standard is abuse of discretion. *Grange Mut. Ins. Co. v. Trude*, 151 S.W.3d 803, 810 (Ky. 2004).

Amiee argues that there were violations of the civil rules of procedure in her case which demonstrate that the circuit court was acting erroneously. Where it is claimed that the lower court is acting erroneously within its jurisdiction, it “is an absolute prerequisite” under Kentucky law that petitioner must show that no adequate remedy by appeal exists. *Newell Enterprises Inc. v. Bowling*, 158 S.W.3d 750, 754 (Ky. 2005). “No adequate remedy by appeal’ means that any injury to [Amiee] ‘could not thereafter be rectified in subsequent proceedings in the case.’” *Independent Order of Foresters v. Chauvin*, 175 S.W.3d 610, 614–15 (Ky. 2005) (quoting *Bender*, 343 S.W.2d at 802). This test determines whether the remedy of a writ is even available, and only if a petitioner satisfies this test will we turn to the merits. *Bender*, 343 S.W.2d at 801.

In the present case, Special Judge Rhorer had scheduled a final hearing, a hearing which in and of itself provides an adequate remedy for many of

Amiee's complaints. Moreover, if Amiee believes any alleged errors have not been remedied by the disposition of her case after the final hearing, she has available to her a direct appeal. See Ky. Const. § 115; CR 73. Thus, she undoubtedly has an adequate remedy by appeal. See *Newell Enterprises*, 158 S.W.3d 750. This Court is not willing to undermine the authority of trial courts by opening the appellate door via extraordinary writs to every party claiming error during pretrial proceedings and trial. *Independent Order of Foresters*, 175 S.W.3d at 615. Accordingly, we cannot say that the Court of Appeals abused its discretion in denying Amiee's petition for an extraordinary writ.

III. Conclusion

Because Amiee has not shown the availability of an extraordinary writ, the Court of Appeals' order, denying her petition for a writ and denying her motion for emergency relief as moot, is affirmed.

All sitting. All concur.

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