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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.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: SEPTEMBER 26, 2013
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2013-SC-000186-MR

JOHN DAVID LEE — APPELLANT

V.

ON APPEAL FROM COURT OF APPEALS
CASE NO. 2012-CA-002220-OA
JEFFERSON FAMILY CIRCUIT COURT NO. 08-CI-504095

HONORABLE A. BAILEY TAYLOR,
SPECIAL JUDGE, JEFFERSON
CIRCUIT COURT, FAMILY DIVISION — APPELLEE

AND

JILL LEANNE LEE, NOW STANLEY;
AND CHRISTOPHER HARRELL,
GUARDIAN AD LITEM — REAL PARTIES IN INTEREST

MEMORANDUM OPINION OF THE COURT

AFFIRMING

The Appellant, John David Lee, asks this Court to reverse a decision of the Court of Appeals denying his petition for a writ of mandamus or prohibition. Because Lee has not satisfied the prerequisites for a writ, the Court of Appeals is affirmed.

This case stems from the fallout of a previous decision, *Lee v. George*, 369 S.W.3d 29, 31 (Ky. 2012), in which this Court affirmed the denial of another writ petition related to Lee's divorce from Jean Stanley (previously Lee) in Jefferson Circuit Court. In that case, Lee had sought a writ to bar the trial court's enforcement of an order requiring him to post a bond before filing any

further pleadings in the case. The trial court had entered the order in an attempt to stop Lee's pattern of vexatious litigation.

In a separate concurring opinion, Justice Noble, joined by Justice Scott, agreed that a writ was not required. *See id.* at 36 (Noble, J., concurring). The concurring opinion acknowledged that the trial court's frustration with Lee was "understandable" in light of his

> willingness to file repetitive and frivolous motions, ... the fact that the $70,000 in attorney fees that had already been awarded to Stanley apparently had no effect on Appellant's approach to the litigation, ... the negative effects of Appellant's tactics on his children (such as the interruption of their therapy because of Appellant's unfounded complaints against their therapist), and ... the waste of the court's and Stanley's resources.

Id. at 38. Nonetheless, the concurrence suggested that the trial court's chosen procedure—the pre-filing bond—was troubling because it affected Lee's access to the courts.

Apparently, Lee has now used this concurring opinion as a sword to try to get the trial judge recused from the underlying case. Though the judge resisted at first, he eventually *sua sponte* recused, noting Lee's "animosity towards, and lack of confidence," in him. When the matter was to be transferred to another division of the Jefferson Family Court, several other judges recused, citing knowledge of the case. Eventually, a special judge from another county was assigned to the case.

Lee has now sought a writ barring the special judge from enforcing any orders entered by the previous trial judge, ordering the special judge recused, ordering a change of venue, and voiding all prior orders.

The Court of Appeals dismissed the petition without reaching the merits, noting that this Court, in the previous writ action, had already stated that all the orders Lee seeks to affect should have been appealed or already have been appealed, and concluding that those matters could not be relitigated. As to the request to recuse the special judge, the court concluded that Lee had already followed the recusal procedures in KRS 26A.015 and could not relitigate that matter.

This Court agrees in every respect.

The orders that Lee seeks to void have already been litigated on appeal or should have been. A writ action is no substitute for an appeal of those matters.

The closest Lee comes to making a colorable claim in this regard is that he claims to have now discovered that the original trial judge was biased against him. First, if that is the case, an extraordinary-writ action is not the appropriate procedure for seeking a remedy; other Civil Rules would provide an adequate remedy. Second, Lee has in no way shown that the original trial judge was biased against him. His attempts to cite the concurring opinion in his previous case as evidence of bias are misguided. If anything, the concurring opinion suggested that the trial judge had been patient with Lee, despite "understandable frustration with him," and had at most made a legal error, which was insufficient to warrant a writ and does not show bias. That opinion did not suggest, as Lee claims, that the judge was not impartial, and notes only that Lee has "alleged bias against him." *Id.* at 36. He also suggests that the original trial judge's decision to recuse necessarily proves some bias by way of a negative inference. We will not, however, infer bias in such instances; and a

subsequent recusal does not, by itself, void or in any way undermine a court's previous orders.

Lee has also argued that Justice Keller's participation on his cases, both on appeal and allegedly at the Judicial Conduct Commission,[1] when she was a member of the Court of Appeals has tainted all such matters and requires that they be voided. He notes that she recused herself from one of his appeals and "states that [she] has been subjected to extra-judicial sources, by way of [his] complaints to the Judicial Conduct Commission." He argues that she cannot sit on both tribunals and that because she has, she should have recused from all such matters. This argument was not presented to the Court of Appeals.

This Court disagrees with Lee. First, arguments raised for the first time on appeal, like this one, are not grounds for reversal. Second, even assuming that Justice Keller should have been recused in those matters (an unlikely proposition), again, a writ action is not the appropriate avenue to seek a remedy.

Finally, as to whether the special judge should be ordered recused, this Court agrees with the Court of Appeals. Lee has already pursued a remedy in this regard under KRS 26A.015. That he was unsuccessful does not in any way entitle him to a writ. Indeed, the mere existence of that statute and the availability of a remedy under it would bar a writ here.

Lee has failed to show any entitlement to a writ. As this Court has stated on multiple occasions, such a remedy is extraordinary in nature, is not to be

[1] Lee has apparently filed multiple complaints against the original trial judge in this matter.

granted lightly, and, in fact, is disfavored. *See Cox v. Braden*, 266 S.W.3d 792, 797 (Ky. 2008). "This is not an extraordinary case." *Id.*

For these reasons, the order of the Court of Appeals is affirmed.

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

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