

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED."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THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE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UNPUBLISHED KENTUCKY APPELLATE DECISIONS,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BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED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

2013-SC-000609-MR

LUTHER CREECH

APPELLANT

ON APPEAL FROM COURT OF APPEALS

V.

CASE NO. 2013-CA-000457

GARRARD CIRCUIT COURT NOS. 08-P-00145 AND 09-CI-00097

HON. HUNTER DAUGHERTY, JUDGE,
GARRARD CIRCUIT COURT

APPELLEE

AND

COMMONWEALTH OF KENTUCKY

REAL PARTY IN INTEREST

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Luther Creech (Creech) appeals, *pro se*, from the June 13, 2013, order of the Court of Appeals denying his petition for a writ of mandamus and his motion for appointment of counsel. Having considered Creech's arguments and having reviewed the record before us, we affirm.

I. FACTUAL BACKGROUND.

Based on the record before us¹, it appears that Creech pled guilty but insane to the 2008 murder of his wife, Courtney. The district court appointed Wilma Hopkins (Hopkins) to act as representative of her daughter Courtney's

¹ All we have in the record is what was filed at the Court of Appeals and herein. We do not have any records from the Garrard Circuit or District Courts.

estate. Hopkins filed a final inventory and informal settlement of the estate in August 2009, after which the court discharged Hopkins and closed the file.

In March 2009, Hopkins, on behalf of the estate, filed a wrongful death claim in Garrard Circuit Court. The court appointed a Guardian *ad litem* (GAL) for Creech. The GAL reported to Creech that in 2010 Hopkins asked the district court to reopen the estate for the limited purpose of accepting a retirement benefit check and disbursing the funds. The district court reopened the estate for that purpose and advised Hopkins to file a motion to be discharged as representative after she had disbursed those funds. It does not appear that Hopkins did so or that any other activity took place in the district court case.

The GAL also reported to Creech that there were only two viable issues in the wrongful death case: (1) whether Hopkins should have been appointed representative of Courtney's estate; and (2) the amount of damages. Furthermore, the GAL reported that he had prepared interrogatories and requests for production of documents and forwarded those to the estate's attorney. At some point thereafter, the GAL apparently filed a motion to dismiss the estate's wrongful death case because, on February 21, 2011, the circuit court entered an order of dismissal referencing a motion by the GAL.

Creech states that he filed a motion with the district court. However, we do not have a copy of that motion in the record and Creech does not state what he was asking the district court to do. Creech states that because he received no response to his motion and no order from the district court, he filed a

motion to compel in circuit court.² Again, we do not have a copy of that motion in the record and do not know who Creech was asking the circuit court to compel, although we presume it was the district court. Furthermore, we do not know what action Creech was asking the circuit court to compel the district court to take. Presumably in response to Creech's motion to compel, the circuit court entered a handwritten notation on the docket calendar on February 28, 2013, stating that the wrongful death case had been dismissed in February 2011. Furthermore, the court stated, "There are no grounds for a Writ of either Prohibition or Mandamus, in that no action has been taken or requested since the case was dismissed." It appears that Creech may have filed a motion to reconsider because the circuit entered a handwritten notation on the docket calendar for March 13, 2013, stating that Creech's motion had been denied.

On March 22, 2013, Creech filed a petition for a writ of prohibition and/or mandamus in the Court of Appeals. The petition makes reference to both the estate case and the wrongful death case and apparently seeks an order requiring an "investigation of the civil settlement and the order that disposed of" his and Courtney's estate. We note that this petition was apparently received by the clerk of the Court of Appeals on February 25, 2013, but "due to administrative delay" it was not filed until March 22.

² The case history from the Garrard Circuit Court states that a motion to compel was filed on November 20, 2012. However, the case history gives no other information regarding that motion.

By order dated June 13, 2013, the Court of Appeals denied Creech's petition. In doing so, the Court stated that "Creech is not entitled to relief by means of a writ. Garrard Circuit Court case number 09-CI-00097 [the wrongful death case] was dismissed by order entered February 16, 2011 [sic]. At the present time, the Garrard Circuit Court is currently not acting on any issues concerning Creech and Creech does not identify any motions that are currently pending before the Garrard Circuit Court." Creech appealed from that order.

II. ANALYSIS.

Although it is difficult to discern exactly what Creech is asking, it appears that he believes that Courtney's estate case remains open in district court and that the district court has not acted on a motion he says he filed on October 9, 2012. Furthermore, as he did before the Court of Appeals, Creech makes reference to the court's failure to return his "estate" and/or his bond money. However, Creech has not identified what property he believes constitutes his "estate" or that he paid any bond related to administration of the estate.

Writs of prohibition and/or mandamus are extraordinary remedies that we entertain and grant cautiously and conservatively. *Newell Enterprises, Inc. v. Bowling*, 158 S.W.3d 750, 754 (Ky. 2005). We will not consider the merits of such a writ unless the requesting party can demonstrate a minimum threshold of harm and lack of redressability on appeal. *St. Luke Hospitals, Inc. v. Kopowski*, 160 S.W.3d 771, 774 (Ky. 2005).

Because Creech has not identified what, if any, claim he has to any of Courtney's estate or what he considers "his estate," and he has not provided any information regarding the bond he allegedly paid, he has not demonstrated how, if at all, he has been harmed. Furthermore, he has not established that he could not and/or should not have appealed from the circuit court's denial of his motion to compel. Therefore, although for different reasons, we affirm the Court of Appeals.

All sitting. All Concur.

COUNSEL FOR APPELLANT:

Luther Creech, *Pro Se*

COUNSEL FOR APPELLEE:

Hon. C. Hunter Daugherty, Judge