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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.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: DECEMBER 13, 2018
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2017-SC-000642-MR

JERRY KEY AND MIRANDA KEY — APPELLANTS

V.

ON APPEAL FROM COURT OF APPEALS
NO. 2017-CA-001277-OA
JEFFERSON CIRCUIT COURT NO. 14-CI-402274

HON. GEOFFREY P. MORRIS
(JUDGE, JEFFERSON CIRCUIT COURT)
(OR HIS SUCCESSOR — APPELLEE

AND

CITIMORTGAGE, INC. — REAL PARTY IN INTEREST

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellants, Jerry and Miranda Key, appeal from the Court of Appeals' order denying their petition for a writ of prohibition. For the following reasons, we affirm the Court of Appeals' order.

I. BACKGROUND

In the underlying case, CitiMortgage initiated a foreclosure action against the Keys in 2014. The parties attempted to settle the case, and, after a delay due to the Keys' attorney's illness and eventual death, CitiMortgage notified the Keys it intended to move for summary judgment once it was clear settlement negotiations had failed in 2017. Six days after CitiMortgage notified the Keys of

this intention, Jerry Key issued written discovery requests to CitiMortgage. After responding to the discovery requests, CitiMortgage moved the trial court for summary judgment and for a protective order and stay of discovery. After receiving the motion for summary judgment, the Keys' counsel contacted CitiMortgage in an attempt to schedule a deposition for a CitiMortgage representative. CitiMortgage responded that the deposition would serve only to increase fees and costs being incurred, as Jerry Key "is Chapter 7 bankruptcy discharged and has admittedly not made a payment on the loan since 2012 (nor was he required to after the discharge)."

The trial court granted CitiMortgage's motion for the protective order and stayed discovery. The Keys filed a petition for a writ of prohibition in the Court of Appeals to prohibit the trial court from enforcing the protective order. The Court of Appeals denied the Keys' petition and they appealed that decision to this Court.

II. ANALYSIS

The issuance of a writ is an extraordinary remedy, and we have always been cautious and conservative in granting such relief. *Grange Mut. Ins. v. Trude*, 151 S.W.3d 803, 808 (Ky. 2004). The standard for granting petitions for writs of prohibition and mandamus is the same. *Mahoney v. McDonald-Burkman*, 320 S.W.3d 75, 77 n.2 (Ky. 2010) (*citing Martin v. Admin. Office of Courts*, 107 S.W.3d 212, 214 (Ky. 2003)). This Court set that standard forth in *Hoskins v. Maricle*:

> A writ . . . 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.

150 S.W.3d 1, 10 (Ky. 2004). Here, there is no argument that the lower court lacked jurisdiction. Therefore, this case falls under the second class of writ, which requires that there be (1) no adequate remedy by appeal and (2) great injustice and irreparable injury.

Under the second class of writs, "[t]his Court has consistently recognized an exception to the irreparable harm requirement in 'certain special cases.'" *Ridgeway Nursing & Rehab. Facility, LLC v. Lane*, 415 S.W.3d 635, 639–40 (Ky. 2013). The Keys ask for relief under this exception in the event that this Court holds that they have not suffered a great and irreparable harm. However, as we have noted, "[i]n order for a writ to issue, the lack of an adequate remedy by appeal or otherwise is an absolute prerequisite, regardless of whether the writ is sought by alleging irreparable harm or invoking the 'certain special circumstances' exception." *Id.* at 240. Therefore, we turn to the threshold issue of whether the Keys have an adequate remedy by appeal. For the following reasons, we hold that the Keys have such a remedy—and affirm the Court of Appeals' order denying the Keys' writ petition.

Kentucky Rules of Civil Procedure (CR) 26.03 provides, in pertinent part:

> Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or

> undue burden or expense, including one or more of the following: (a) that the discovery not be had . . . .

We note that "[t]rial courts are conferred with broad discretion in managing discovery in light of the unique factors present in any particular case." *Commonwealth Fin. & Admin. Cabinet v. Wingate*, 460 S.W.3d 843, 849 (Ky. 2015). Here, the trial court exercised that discretion and entered a protective order staying discovery until it ruled on CitiBank's motion for summary judgment. In determining whether to grant the Keys' writ, we need not decide whether the trial court's ruling was in error, but merely whether the Keys have an adequate remedy by appeal or otherwise.

The Keys argue that they could not effectively respond to CitiBank's motion for summary judgment without further discovery. However, even assuming the Keys are correct in this assertion, we hold they have an adequate remedy by appeal.

The Keys argue that no adequate remedy exists and rely heavily on our opinion in *Rehm v. Clayton*, 132 S.W.3d 864, 867–68 (Ky. 2004). There, we stated that "a discovery stay as extensive as the one ordered by the trial court is likely to cause irreparable injury to the Appellants for which no adequate remedy by appeal exists." We noted that "as time passes, evidence is destroyed or lost and physical conditions may change." *Id.* However, the Keys' reliance on *Rehm* is misplaced. In *Inverultra, S.A. v. Wilson*, 449 S.W.3d 339, 347 (Ky. 2014), this Court identified *Rehm* as an outlier and stated it "can be harmonized with the rest of our mandamus case law if limited to [its] facts. We

explained that "[i]n *Rehm*, a plaintiff injured by asbestos exposure brought both product liability and premises liability claims against numerous defendants." *Id.* The facts of that case involved the plaintiff's medical condition, which was subject to change. We stated:

> It will be a rare petitioner who cannot claim that being forced to wait and raise the denial of discovery on appeal would subject him to at least a conceivable loss of information. Indeed, why stop with discovery rulings? Many a party aggrieved by an interlocutory ruling will be able to point to some conceivable loss of information or of evidence if denied CR 81 review and made to await appeal. That general risk of conceivable information loss, like "inconvenience, expense, annoyance and other undesirable aspects of litigation," *Fritsch v. Caudill*, 146 S.W.3d 926, 930 (Ky.2004) is simply one of the ordinary costs of litigation, and we have held time and time again that such costs do not make an appeal an inadequate remedy.

Id. at 346–47. We ultimately held that "Inverultra has no such facts. It has not been denied all discovery nor has it identified any specific risk of information loss outside the ordinary, and its appeal remedy is wholly adequate." Here, the Keys fail to show any specific risk of information loss outside the ordinary.

The Keys' argument that they will have no adequate remedy if CitiMortgage forecloses on their home is simply without merit. Based on our precedent, we agree with the Court of Appeals assessment that "[i]f the trial court grants the motion for summary judgment, then the Keys will be able to raise the issue of the denial of discovery on appeal. If the trial court denies the motion for summary judgment, then the issue of discovery can be revisited." This is the very definition of an adequate remedy by appeal.

Because the Keys fail to meet the threshold requirement of showing they have no adequate remedy by appeal, our analysis need go no further.

III. CONCLUSION

For the foregoing reasons, we affirm the Court of Appeals denial of the Keys' petition for a writ of prohibition.

All sitting. All concur.

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