

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.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: AUGUST 29, 2019
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2018-SC-000688-MR

CRAIG ROPER

APPELLANT

V.

ON APPEAL FROM COURT OF APPEALS
CASE NO. 2018-CA-001557-OA
BOONE FAMILY COURT NO. 16-CI-00681

HON. LINDA BRAMLAGE, JUDGE,
BOONE FAMILY COURT,
AND ERIN ROPER, REAL PARTY OF INTEREST

APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Craig Roper claims that the Court of Appeals wrongly denied his petition for a writ of prohibition sought to prohibit the trial court from enforcing orders associated with his divorce from Erin Roper. Because Craig, Erin and their children moved to Texas while the divorce was pending, Craig argues that the trial court lost subject matter jurisdiction. A direct appeal of the court's decree of dissolution is still pending in the Court of Appeals.¹

Craig and Erin were married in Kentucky and have four children. Erin filed a petition for the dissolution of marriage on May 25, 2016, in Boone County, Kentucky. At the time of the filing, all parties lived in Kentucky and

¹ Kentucky Court of Appeals, Case Number 2018-CA-000979-ME.

had lived here for at least six months prior to the filing of the petition. Subsequent motions were filed regarding child support, child custody, and spousal maintenance. On February 8, 2017, Craig filed a motion seeking to relocate with the children to Texas due to a transfer with his employment, which the circuit court granted. In order to be closer to her children Erin moved to Frisco, Texas in April 2017. Craig and the children then moved to Frisco, Texas in May 2017. Craig and Erin entered into a “Partial Settlement Agreement Regarding the Children of the Parties” and a bifurcated decree of dissolution was entered on February 28, 2018. The remaining issues of property, spousal support and child support were heard by the court over three separate days, with a supplemental decree entered on July 11, 2018. It is the enforcement of this decree that Craig protests.

Craig argues for granting his writ of prohibition, claiming that the Boone County family court is acting outside of its subject matter jurisdiction and there is no remedy through an intermediate court.² Craig claims that the family court lost subject matter jurisdiction when all parties and their children left the state of Kentucky in May 2017, several months after commencement of the proceedings, but before the entry of the decree.

In order to obtain a writ of prohibition based on lack of subject matter jurisdiction, there must be no remedy through an intermediate court.³ The direct appeal of the dissolution action is still an active case at the Kentucky

² *Hoskins v. Maricle*, 150 S.W.3d 1, 10 (Ky. 2004).

³ *Hoskins*, 150 S.W.3d at 10.

Court of Appeals. Consequently, Craig has failed to show that there is no potential remedy through an intermediate court.

For the foregoing reasons, we affirm the Court of Appeals.

All sitting. All concur.

COUNSEL FOR APPELLANT:

Tasha K. Scott Schaffner
Crestview Hills, KY 41071

COUNSEL FOR APPELLEE, ERIN ROPER:

Barbara J. Howard, Co., LPA
Cincinnati, OH 45202

Hon. Linda Rae Bramlage
Judge, Boone Family Court
Burlington, KY 41005