

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.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

2020-SC-0372-MR

HARPER SUB CLUB, LLC AND
PAIGE MCKEE

APPELLANTS

ON APPEAL FROM COURT OF APPEALS
NO. 2020-CA-0211
V. BOONE CIRCUIT COURT NO. 17-CI-00662

HONORABLE JAMES R. SCHRAND,
JUDGE, BOONE CIRCUIT COURT

APPELLEE

AND

MARKUS RESING

REAL PARTY IN INTEREST

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Alleging failures by both the trial and appellate courts to properly interpret our Civil Rules¹, Rules of Evidence², as well as the Kentucky Uniform Commercial Code, Petitioners Harper Sub Club, LLC and Paige McKee request a writ of prohibition and/or mandamus under both the first and second class of writs as well as the “certain special circumstances” exception. Finding the petition without merit, we affirm the Court of Appeals’ decision.

¹ Kentucky Rules of Civil Procedure.

² Kentucky Rules of Evidence.

I. Factual and Procedural Background

The factual premise of the appeal is founded on the terms of a loan between Markus Resing and Paige McKee, the sole owner of Harper Sub Club, LLC. In 2010, Resing loaned Sub Club \$50,000 at 8% interest. The loan was to mature in 2012. McKee, a licensed attorney, drafted the note, which included an option for Sub Club to convert the outstanding debt into an ownership interest for Resing.

McKee made no payments on the debt, but allegedly made continual assurances to Resing that the LLC would repay the loan. However, in 2017, McKee liquidated Sub Club's assets without notifying Resing. McKee utilized the proceeds of her sale in part to pay off her student loan debt. Consequently, Resing filed a complaint in Boone Circuit Court against Sub Club and McKee seeking repayment of the loan. Following discovery, Resing filed a motion for summary judgment, which was granted in part and denied in part.

Sub Club moved for the trial court to make its partial summary judgment final and appealable.³ The trial court denied the motion. Thereafter, the attorney representing Sub Club withdrew. Resing renewed his motion for summary judgment in January 2020, but before the trial court could rule, McKee, on behalf of Sub Club, filed the writs at issue with the Court of

³ We note, that although irrelevant to this appeal, McKee has filed numerous other motions, often tardy and with flimsy legal or procedural support.

Appeals.⁴ The Court of Appeals denied the petitions for Prohibition and/or Mandamus. This appeal followed.

II. Standard of Review

Because writs, definitionally, depart from our regular process, they are always accompanied with a “specter of injustice[.]” *S. Fin. Life Ins. Co. v. Combs*, 413 S.W.3d 921, 925 (Ky. 2013) (quoting *Cox v. Braden*, 266 S.W.3d 792, 795 (Ky. 2008)). Consequently, writs are only appropriate in the most exacting and extraordinary circumstances, with the application of an exceedingly strict standard to determine the availability of the remedy being sought. *Combs*, 413 S.W.3d at 925.

Since granting a writ is a discretionary act, we generally review the Court of Appeals decision for abuse of discretion; reserving clear error review for any factual findings made. *Id.* at 926. However, for questions of law, such as jurisdictional matters in writs of the first class, our standard of review remains *de novo*. *Id.*

III. Analysis

A. A writ of the first class is not appropriate.

Petitioners’ claim to the first class of writs may be dealt with summarily. Writs of the first class invoke subject matter jurisdiction; whether a court may hear a “kind of case[.]” *Davis v. Wingate*, 437 S.W.3d 720, 725 (Ky. 2014) (citations omitted). A court acts outside of its jurisdiction only when no

⁴ During the pendency of the Court of Appeals action, McKee also filed for, and was denied, intermediary relief.

“constitutional provision or statute[]” grants authority for the court to hear the case. *Id.* The Boone Circuit Court, as a court of general jurisdiction, has “original jurisdiction of all justiciable causes not vested in some other court.” Ky. Const. § 112(5); *see also* KRS⁵ 23A.010(1) (“[The Circuit Court] has original jurisdiction of all justiciable causes not exclusively vested in some other court[]”). Since the underlying claim to this petition is a contract dispute involving more than \$5,000, the Boone Circuit Court enjoys the necessary jurisdiction to hear the claim. *See* KRS 24A.120(1) (granting the District Court exclusive jurisdiction to hear civil matters involving \$5,000 or less; with enumerated exceptions). Petitioners’ argument regarding Resing’s standing to bring the case is entirely inapposite because it simply does not implicate the court’s ability to hear the case.⁶

B. No writ of the second class is appropriate.

When a party seeks a writ of the second class, the petition may be granted if the party can demonstrate that (1) “no adequate remedy by appeal or otherwise” exists and (2) that it would suffer a “great injustice and irreparable injury” if we fail to grant its petition. *Hoskins v. Maricle*, 150 S.W.3d 1, 6 (Ky. 2004) (internal citation omitted). In “certain special cases” we may waive a petitioner’s requirement to show great injustice and irreparable harm if it can demonstrate that correcting the error is “necessary and appropriate in the

⁵ Kentucky Revised Statutes.

⁶ Petitioners’ claims amount to questioning Resing’s legal entitlement to bring the suit, when in fact, the Boone Circuit Court is the appropriate judicial forum to hear any arguments regarding Resing’s standing in the first place.

interest of orderly judicial administration.” *Marcum v. Scorsone*, 457 S.W.3d 710, 715-16 (Ky. 2015) (citations omitted). In such cases, the Court recognizes that by failing to grant the writ, the system itself will be the victim of “great and irreparable injury.” *Id.*

The functional result of our two-part test and “certain special cases” exception is that petitioners are always required to show that they have no “adequate remedy by appeal or otherwise.” Contextually, this requires petitioners to prove that injurious conduct of the lower court “could not thereafter be rectified in subsequent proceedings in the case.” *Newell Enters., Inc. v. Bowling*, 158 S.W.3d 750, 754 (Ky. 2005) (citation omitted), *overruled on other grounds by Interactive Media Entm’t & Gaming Ass’n., Inc. v. Wingate*, 320 S.W.3d 692 (Ky. 2010). Consequently, if any avenue for a remedy exists, a writ of the second class is inappropriate. 158 S.W.3d at 754; *see also Cox*, 266 S.W.3d at 797 (affirming the rule that petitioners must always show they lack an adequate remedy).

Petitioners fail to prove they lack an adequate remedy because, as the Court of Appeals correctly analyzed, each assignment of error they raise now may also be raised through direct appeal under CR 73.02, following the circuit court’s entry of a final judgment. Indeed, all the harm Petitioners allege has either not occurred yet, because the trial has not been held; or involves questions of law, for which the traditional appeals process is well suited. Neither circumstance is extraordinary in the slightest.

IV. Conclusion

For the reasons stated above, we affirm the Court of Appeals' denial of a writ of prohibition and/or mandamus.

All sitting. Minton, C.J.; Conley, Hughes, Lambert, Nickell, and VanMeter, JJ., concur. Keller, J., concurs in result only.

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