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CORRECTED: MARCH 26, 2020
 RENDERED: OCTOBER 31, 2019
 NOT TO BE PUBLISHED

Supreme Court of Kentucky

2019-SC-000093-MR

JERRY W. WELLS APPELLANT

ON APPEAL FROM COURT OF APPEALS
V. CASE NO. 2018-CA-001467-OA
WARREN FAMILY COURT NO. 14-CI-00479

HON. CATHERINE HOLDERFIELD, APPELLEE
JUDGE, WARREN FAMILY COURT,
DIV. IV,

AND

ROBBIN NELSON; ROBERT REAL PARTIES
ANDREW SHARP, JR.; HEATHER IN INTEREST
ANNE GREENE SHARP; A.K.S.,
A MINOR CHILD; AND R.A.S. III,
A MINOR CHILD

MEMORANDUM OPINION OF THE COURT

AFFIRMING

This appeal from the denial of a writ of mandamus stems from a Warren Family Court child custody action involving A.K.S. and R.A.S., III., the minor children of Robert Andrew Sharp, Jr. and Heather Anne Greene Sharp. Jerry Wells is married to Robbin Nelson, the paternal grandmother of the children, but was not a party to the action below. In May 2014, Robert and

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Heather Sharp, while still married¹, entered into an agreed order that permanent *de facto* custody of their children be placed with Nelson.

In 2015, Heather filed motions seeking to modify custody and set visitation. The family court established a visitation schedule for the parents at that time. Citing medical and educational reasons, Nelson sought and was granted permission, over Heather's objection, to move with the minor children to Nashville, Tennessee.

Approximately six months later, Nelson and Wells both filed a petition to adopt the children in Tennessee. In April 2016, before the adoption proceedings could be finalized, Heather filed a motion for contempt in Warren Family Court against Nelson for her failure to allow visitation. The Warren Family Court entered an order asserting continuing, exclusive jurisdiction over the child custody issues in accordance with the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA).²

Around September 2016, Heather filed a motion to modify custody in the Warren Family Court. The Tennessee court stayed the adoption proceedings

¹ Robert and Heather later divorced.

² UCCJEA § 202(a). The UCCJEA is a codified uniform state law drafted by the National Conference of Commissioners on Uniform State Laws for the purpose of determining which state has jurisdiction to decide custody decisions. Kentucky adopted the UCCJEA through Kentucky Revised Statutes (KRS) 403.800 to 403.880.

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pending the outcome of the Kentucky custody determination. In July 2017, the Warren Family Court granted temporary custody to Heather. On November 28, 2017, the family court granted a motion filed by Heather and entered an order which prohibited contact between the minor children and Nelson.

A final custody hearing was scheduled in Warren Family Court for October 12, 2018. It was not until September 20, 2018 that Wells filed a motion, without an accompanying petition, seeking to intervene in the custody action. Wells asserted he should have been named as a *de facto* custodian along with his wife, Nelson, and therefore should be a party to the action.

On October 8, 2018, Wells filed a *pro se* petition for a writ of mandamus with the Court of Appeals and requested immediate relief of the family court's ruling. The Court of Appeals denied the request for emergency relief on October 8, 2018. The next day, Judge Holderfield entered an order denying his motion to intervene and set a final hearing on the modification of custody. It does not appear from an online review of CourtNet³ that Wells filed a motion to alter, amend or vacate the order denying his motion to intervene, nor does it appear that he filed a notice of appeal. Wells filed a motion for reconsideration in the writ action, and it was denied on October 12, 2018. While the writ action was still pending before the Court of Appeals, Judge

³ CourtNet is an online search tool used to find civil and criminal cases. CourtNet is not an Official record. It offers detailed case information from the proceedings of each individual case.

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Holderfield entered findings of fact and conclusions of law on December 20, 2018.⁴ On January 9, 2019, the assigned Court of Appeals panel entered an order denying the extraordinary writ. In its order, the Court of Appeals declined to address several of Wells' claims, including his request to disqualify Judge Holderfield from presiding over the case, a request he also argues before this Court. We agree with the Court of Appeals that as a non-party without standing or a stake in the family court proceedings, Wells did not have standing to seek disqualification of the judge. Wells timely sought review regarding the writ of mandamus in this Court.

Wells argues for granting his writ of prohibition, claiming that the Warren Family Court is acting outside of its jurisdiction and there is no remedy through an intermediate court. There are two classes of extraordinary writs available to litigants.⁵ The first class of writs applies when a lower court is acting outside of its subject matter jurisdiction and there is no adequate remedy through application to an intermediate court.⁶

⁴ Information gleaned from CourtNet step sheet of underlying custody action. It is unclear from the record if this was a final judgment or not. However, a review of the Court of Appeals dockets show that Robbin Nelson has filed an appeal, (*Robbin Nelson v. Heather Anne Sharp, et al*) with an associated Circuit case listed as Warren Family Court, Judge Holderfield, 14-CI-00479.

⁵ *Hoskins v. Markle*, 150 S.W.3d 1, 10 (Ky. 2004).

⁶ *Id.*

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Wells claims that the family court lost subject matter jurisdiction after the children lived in Tennessee for six (6) months, arguing that Tennessee became the children's home state pursuant to the UCCJEA. However, even though Nelson, Wells and the children moved to Tennessee, Kentucky could and did retain exclusive, continuing jurisdiction over the child custody and visitations matters. When the action commenced in May 2014, all parties were Kentucky residents, Kentucky entered the initial child custody determination, and Heather maintained her residency and exercised parenting time with the children in Kentucky throughout. Pursuant to KRS § 402.824,

- (1) [A] court of this state which has made a child custody determination consistent with KRS 403.822 or 403.826 has exclusive, continuing jurisdiction over the determination until:
 - (a) A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have significant connections with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationship[.]

Wells argues that Kentucky lost jurisdiction to Tennessee, noting that adoption proceedings had been initiated in Tennessee. However, *Williams v. Bittel*⁷ held that even a final Georgia adoption decree did not divest Kentucky of its jurisdiction in a child custody

⁷ 299 S.W.3d 284 (Ky. App. 2009).

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matter. The court in *Bittel* opined “Our reading of both the UCCJEA and PKPA⁸ persuades us that exclusive, continuous jurisdiction of the custody matters remains in Kentucky as long as Bittel resides in Kentucky and maintains a significant relationship with M.K. (internal citation omitted).”⁹ Therefore, the Warren Family Court was acting within its continuing jurisdiction regarding child custody and visitation.

In the alternative, Wells argues that he is entitled to a writ under the second class of writs. The second class requires a showing that: 1) the lower court is acting or is about to act erroneously, although within its jurisdiction; 2) there exists no adequate remedy by appeal or otherwise; and 3) great injustice and irreparable injury will result if the petition is not granted.¹⁰ The problem with Wells’ argument as to either class of writs is the same, there is (or was) a remedy available to him by appeal.

This Court has consistently held that an order denying a motion to intervene is immediately appealable.¹¹ In *City of Henderson v. Todd*:

It was well settled under the former Civil Code that the filing of an intervening petition

⁸ Parental Kidnapping Prevention Act.

⁹ 299 S.W.3d at 288.

¹⁰ *Hoskins*, 150 S.W.3d at 10.

¹¹ See *City of Henderson v. Todd*, 314 S.W.2d 948 (Ky. 1958); *Hazel Enterprises, LLC v. Community Financial Services Bank*, 382 S.W.3d 65 (Ky. App. 2012); *Baker v. Webb*, 127 S.W.3d 622 (Ky. 2004); and *A.H. v. W.R.L.*, 482 S.W.3d 372 (Ky. 2016).

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by an interested party was a matter of right and a denial thereof was an appealable order. Civil Rule 24.01 provides that upon timely application anyone *shall* be permitted to intervene in an action under described conditions, and CR 24.02 *permits* intervention under stated conditions. While it would appear that the denial of a motion for leave to intervene is interlocutory and not forthwith appealable, unless intervention is a matter of right we regard an appeal from an order denying intervention under either rule to be proper after final judgment in the case, even though a forthwith appeal would have been proper where intervention was a matter of right under CR 24.01. (internal citations omitted).¹²

Furthermore, in *A.H. v. W.R.L.*¹³, this Court held that a mother's former same sex partner asserted a cognizable custodial interest and, thus, had a right to intervene under Kentucky Rule of Civil Procedure (CR) 24.01.¹⁴ Similarly, Wells asserts he has a custodial interest in the children because he is Nelson's husband and helped co-parent the children.

CR 24.01, our matter of right intervention rule, states as follows:

- (1) Upon timely application anyone shall be permitted to intervene in an action (a) when a statute confers an unconditional right

¹² 314 S.W.2d at 951.

¹³ 482 S.W.3d 372.

¹⁴ *Id.* at 375.

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to intervene, or (b) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless that interest is adequately represented by existing parties.

(2) Anyone possessing a statutory right of intervention under (1)(a) above, may move the court to intervene in a pending action and, on failure of a party to file an objection within ten (10) days to the intervention and a notice of hearing on the objection, have an order allowing the intervention without appearing in court for a hearing.

Significantly, CR 24.03 requires that a pleading be submitted with the motion to intervene. According to the family court order denying his intervention, Wells failed to file a petition with his motion to intervene.

CR 24.03 states as follows:

A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and **shall be accompanied by a pleading** setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene. When the constitutionality of an act of the General Assembly affecting the public interest is drawn into question in any action, the movant shall

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serve a copy of the pleading, motion or other paper first raising the challenge upon the Attorney General.

Wells had an opportunity to pursue a direct appeal regarding the denial of the intervention but has failed to do so. Consequently, Wells has failed to show a lack of potential remedy through an intermediate court and is not entitled to a writ of mandamus. Likewise, as a non-party, Wells has no standing to assert that Judge Holderfield should be removed as Judge in the underlying case.

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

All sitting. All concur.

APPELLANT:

Jerry W. Wells, pro se
Nashville, TN

COUNSEL OF RECORD FOR APPELLEE, HON.
CATHERINE HOLDERFIELD, JUDGE, WARREN
FAMILY COURT, DIV. IV.:

Catherine Rice Gaither Holderfield
Warren County Justice Center

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COUNSEL OF RECORD FOR HEATHER ANNE
GREENE SHARP, REAL PARTY IN INTEREST, A.K.S.,
A MINOR CHILD, REAL PARTY IN INTEREST,
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Kenneth A. Meredith, II
Bowling Green, KY

Supreme Court of Kentucky

2019-SC-000093-MR

JERRY W. WELLS

APPELLANT

ON APPEAL FROM COURT OF APPEALS

V. NO. 2018-CA-001467

WARREN CIRCUIT COURT NO. 14-CI-00479

HON. CATHERINE HOLDERFIELD, APPELLEES
JUDGE, WARREN FAMILY COURT,
DIVISION IV, ET AL.

ORDER

Appellant's pro-se motion for leave of court to file a motion to the lower trial court for correction of the record, specifically the decree of the order of May 15, 2014, and for the leave to file an amended appellee's brief following correction of the lower court records, in the above-styled action, is passed to the consideration of the merits of the appeal.

Appellant's pro-se motion to submit the certified transcript of the lower court May 6, 2014 hearing in support of appellant Jerry W. Wells' standing in his reply brief and motion for leave of court for the CR 60.01 correction of the lower court record, in the above-styled action, is passed to the consideration of the merits of the appeal.

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ENTERED: August 26, 2019.

/s/ John D. Minton Jr.
Chief Justice

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Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001467-OA

JERRY W. WELLS

PETITIONER

AN ORIGINAL ACTION ARISING FROM

v. WARREN CIRCUIT COURT
ACTION NO. 14-CI-00479

HONORABLE CATHERINE
RICE HOLDERFIELD, JUDGE,
WARREN FAMILY COURT

RESPONDENT

AND

ROBBIN NELSON, HEATHER
ANNE GREENE SHARP, ROBERT
ANDREW SHARP, JR. A.K.S.,
A MINOR CHILD, AND R.A.S. III, REAL PARTIES
A MINOR CHILD IN INTEREST

ORDER DENYING
MOTION FOR RECONSIDERATION AND
EXTRAORDINARY WRIT

** * * * * * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; DIXON AND
NICKELL, JUDGES.

Petitioner, Jerry W. Wells, hereinafter Wells, seeks a writ asserting the circuit court does not have jurisdiction and made numerous erroneous rulings. Simultaneously with the petition, Wells filed a motion for intermediate relief to stay an October 12, 2018

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hearing. This motion was denied. Wells thereafter filed a motion for reconsideration. This motion is DENIED. Wells filed a motion seeking to supplement the writ with an exhibit that was not previously available. The motion is GRANTED and the tendered supplement is ORDERED FILED. Wells has filed a second motion to supplement his petition with a complaint from an unrelated action against Judge Holderfield. This motion is DENIED. Heather Ann Greene Sharp, hereinafter Heather, a Real Party in Interest, has responded objecting to the petition. Having considered the pleadings herein and being otherwise sufficiently advised, the Court hereby DENIES the petition.

The underlying circuit court case is a child custody action involving Real Parties in Interest A.K.S. and R.A.S., III. In 2014, Robbin Nelson, the children's grandmother, petitioned for and was granted permanent sole custody of them. Wells is Nelson's husband but he was not included in the initial action and was not named in the custody decree. Heather and Robert Andrew Sharp, Jr. are the biological parents of the minor children.

In 2015, Heather filed motions seeking to modify custody and set visitation. Ultimately, a visitation schedule was established for the parents. Nelson sought and was granted permission, over Heather's objection, to move with the children to Tennessee but, the visitation schedule was maintained and Heather exercised her visitation in Bowling Green, Kentucky.

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In 2016, an adoption action was initiated in Tennessee by Nelson and Wells. Heather filed in Warren Circuit Court a motion for Nelson to be held in contempt for failure to allow visitation. The Warren Circuit Court entered an order asserting continuing, exclusive jurisdiction over child custody issues. Heather then filed a motion to modify custody. In 2017, the circuit court granted temporary custody to Heather.

On September 20, 2018, Wells filed a motion seeking to intervene in the custody action. Wells asserted that he should have been named as a *de facto* custodian with his wife, Nelson, and therefore, he is a necessary party to the action. The circuit court denied the motion and set a final hearing on the modification of custody. This petition followed.

There are two classes of extraordinary writs. *Hoskins v. Maricle*, 150 S.W.3d 1, 10 (Ky. 2004); *see also Lee v. George*, 369 S.W.3d 29, 32 (Ky. 2012). The first class of writs only applies when the claim involves a lower court acting outside of its subject matter jurisdiction and there is no remedy through an application to an intermediate court. *Hoskins*, 150 S.W.3d at 10; *see also Goldstein v. Feeley*, 299 S.W.3d 549 (Ky. 2009). The second class requires a showing that: 1) the lower court is acting or is about to act erroneously, although within its jurisdiction, 2) there exists no adequate remedy by appeal or otherwise, and 3) great injustice and irreparable injury will result if the petition is not granted. *Hoskins*, 150 S.W.3d at 10.

Wells has raised several claims. He argues the circuit court lacks jurisdiction, the circuit court judge is biased and should be recused, and the circuit court judge and Heather's counsel need to be recused as they are necessary witnesses. Additionally, Wells argues the court made the following errors: denying Wells's motion to intervene as a necessary party, destroying Wells's pleadings, restricting the children from being in Tennessee, denying requests to have Heather undergo a neuropsychiatric evaluation, and failing to require Heather to produce the children's medical records. Wells argues that as a non-party an appeal is not a viable remedy and therefore he is entitled to a writ. Wells's arguments fail.

The Court will first address Wells's claim that the circuit court erred in denying his motion for intervention and a writ is necessary to remedy the error. Where the circuit court is acting within its subject matter jurisdiction, it is "an absolute prerequisite" to the issuance of a writ that the petitioner demonstrates no adequate remedy by appeal exists. *The Independent Order of Foresters v. Chauvin*, 175 S.W.3d 610, 615 (Ky. 2005). "'No adequate remedy by appeal' means that any injury to [the petitioner] 'could not thereafter be rectified in subsequent proceedings in the case.'" *Id.* at 614-15 (quoting *Bender v. Eaton*, 343 S.W.2d 799, 802 (Ky. 1961)).

Herein, the circuit court is acting within its subject matter jurisdiction. When the action commenced all parties were Kentucky residents and Kentucky entered an initial child custody determination. Despite

the fact Nelson and the children moved to Tennessee, Kentucky retained exclusive, continuing jurisdiction over child custody modification because at least one parent, Heather, remained and exercised her parenting time with the children here in Kentucky. KRS 403.822. The fact Nelson and Wells initiated adoption proceedings in Tennessee does not change this analysis. *See Williams v. Bittel*, 299 S.W.3d 284 (Ky. App. 2009) (holding Georgia adoption decree did not divest Kentucky courts of child custody jurisdiction). Even assuming the circuit court did err in denying intervention, Wells has an adequate remedy by way of an appeal and therefore this claim fails. *See City of Henderson v. Todd*, 314 S.W.2d 948 (Ky. 1958); *Hazel Enterprises, LLC v. Community Financial Services Bank*, 382 S.W.3d 65 (Ky. App. 2012); *Bailey v. Bertram*, 471 S.W.3d 687 (Ky. 2015).

The Court need not address Wells's remaining claims of erroneous discovery rulings and matters of recusal because, as a non-party without standing or a stake in the circuit court proceedings, he does not have standing to seek a writ against the circuit court. *Interactive Media Entertainment and Gaming Association, Inc.*, 320 S.W.3d 692 (Ky. 2010).

Based on the above, the petition for a writ is DENIED.

ENTERED: JAN 09 2019 /s/ Denise G. Clayton
CHIEF JUDGE,
COURT OF APPEALS

COMMONWEALTH OF KENTUCKY
8TH JUDICIAL CIRCUIT
WARREN CIRCUIT COURT-DIV. IV
FAMILY COURT
CATHERINE RICE HOLDERFIELD, JUDGE
CIVIL ACTION NO. 14-CI-00479
DE FACTO ACTION

ROBBIN NELSON PETITIONER

v. ORDER DENYING JERRY WELLS'
MOTION TO INTERVENE

HEATHER ANNE SHARP and
ROBERT ANDREW SHARP, JR. RESPONDENTS

This matter having come before the Court upon Jerry Wells' Pro Se Motion to Intervene and Motion for Declaration of De Facto Custodian Status on September 28, 2018, the Court having reviewed the entire record contained herein, and otherwise being sufficiently advised:

It is hereby ORDERED AND ADJUDGED Mr. Wells' Motion to Intervene and Motion for Declaration of De Facto Custodian Status is hereby DENIED. The Court finds Mr. Wells did not comply with CR 24 by waiting more than four years in which to seek intervention, waiting two weeks prior to the final hearing of the underlying matter in which to seek intervention, and he filed no Intervening Petition.

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This is the 9th day of October, 2018.

/s/ Catherine Rice Holderfield
CATHERINE RICE
HOLDERFIELD, JUDGE
WARREN CIRCUIT
COURT, DIV. IV
FAMILY COURT

TENDERED BY:

/s/ Casey A. Hixson
CASEY A. HIXSON

Clerk send copies to:
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Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001467-OA

JERRY W. WELLS

PETITIONER

ON MOTION FOR INTERMEDIATE RELIEF
v. IN AN ORIGINAL ACTION ARISING FROM
WARREN FAMILY COURT
ACTION NO. 14-CI-00479

HONORABLE CATHERINE
RICE HOLDERFIELD, JUDGE,
WARREN FAMILY COURT

RESPONDENT

ROBBIN NELSON, ROBERT
ANDREW SHARP, JR., HEATHER
ANNE GREENE SHARP, A.K.S.,
A MINOR CHILD, AND R.A.S. III, REAL PARTIES
A MINOR CHILD IN INTEREST

ORDER DENYING MOTION FOR
INTERMEDIATE RELIEF

** * * * * * * * *

This matter is before the Court on a motion for intermediate relief in an original action by which the petitioner, Jerry W. Wells, seeks, among other things, to prevent a custody hearing that is scheduled for Friday, October 12, 2018, in the Warren Family Court. He also asks this Court to grant him de facto custodial status of the minor children involved in this matter. Having considered the motion for intermediate relief

and having been otherwise sufficiently advised, the Court ORDERS that the motion be DENIED.

This original action stems from a custody action out of Warren County Family Court. Petitioner, Jerry W. Wells, is the step-paternal grandfather of the minor children, A.K.S. and R.A.S., III. He is married to real party in interest, Robbin Nelson, the paternal grandmother of the minor children. Real parties in interest, Robert Andrew Sharp, Jr.¹ and Heather Anne Greene Sharp are the natural parents of the minor children.

In May 2014, Mr. Sharp and Ms. Sharp agreed to make Ms. Nelson the de facto custodian of the minor children in Warren Family Court Case No. 14-CI-00479 while they resolved marital and other issues. Since that time, Mr. Sharp and Ms. Sharp were divorced through Warren Family Court Case No. 14-CI-00704. On September 30, 2016, Ms. Sharp filed a motion to modify custody. On March 21, 2017 the Warren Family Court entered an order granting Ms. Sharp temporary custody of the minor children. Although this matter has been ongoing for over four years in Warren Family Court, Mr. Wells did not move to intervene or seek to be granted de facto custodial status until September 20, 2018—approximately three weeks before a custody hearing was scheduled to be held on October 12, 2018. On September 28, 2018, the Warren Family Court held a hearing on Mr. Wells' motions and made a ruling

¹ Mr. Sharp is the step-son of Mr. Wells; Ms. Nelson is Mr. Sharp's mother.

from the bench denying Mr. Wells' motions.² On October 8, 2018, Mr. Wells, *pro se*, filed a Petition for Writ of Prohibition/Mandamus and a Motion for Intermediate Relief pursuant to CR 76.36(4). An order denying Mr. Wells' motions to intervene and to be declared a de facto custodian was entered on October 9, 2018.

At this stage, the Court does not adjudicate the original action; however, the necessity of demonstrating a likelihood of success on the underlying petition is implicit in the required showing for CR 76.36(4) relief. Consequently, the Court must consider whether Mr. Wells may be entitled to the issuance of a writ. The standard governing the issuance of an extraordinary writ is well established:

A writ of prohibition 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; (2) that the lower court is acting or is about to act erroneously, although within its jurisdiction, and there exist no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result if the petition is not granted.

² Courts speak "only through written orders entered upon the official record." *Kindred Nursing Centers Ltd. Partnership v. Sloan*, 329 S.W.3d 347, 349 (Ky. App. 2010). This Court does not review oral orders. However because a written order was entered one day after Mr. Wells filed the instant motion, the Court will consider the motion under the general rational of *James v. James*, 313 S.W.3d 17 (Ky. 2010).

Hoskins v. Maricle, 150 S.W.3d 1, 10 (Ky. 2004). Demonstrating the lack of an adequate remedy by appeal or otherwise is an “absolute prerequisite” to the issuance of a writ in cases where the circuit court is acting within its jurisdiction. *The Independent Order of Foresters v. Chauvin*, 175 S.W.3d 610, 615 (Ky. 2005). Here, the Warren Family Court is clearly acting within its subject matter jurisdiction. Mr. Wells must therefore demonstrate that he has no adequate remedy by appeal or otherwise. “No adequate remedy by appeal” means that any injury to [the petitioner] ‘could not thereafter be rectified in subsequent proceedings in the case.’” *Id.* at 614-15 (quoting *Bender v. Eaton*, 343 S.W.2d 799, 802 (Ky. 1961)).

Denial of a motion to intervene is an issue that is remediable by direct appeal. *See City of Henderson v. Todd*, 314 S.W.2d 948 (Ky. 1958); *Hazel Enterprises, LLC v. Community Financial Services Bank*, 382 S.W.3d 65 (Ky. App. 2012); *Bailey v. Bertram*, 471 S.W.3d 687 (Ky. 2015). Because Mr. Wells has a remedy by direct appeal, he cannot show a likelihood of success on the underlying petition for writ of prohibition and mandamus.

Because Mr. Wells fails to show a likelihood of success on the underlying petition, the Court ORDERS the CR 76.36(4) motion for intermediate relief DENIED. The original action will come before a three

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judge panel of this Court after the expiration of response time provided by CR 76.36(2).

ENTERED: OCT 08 2018 /s/ Joy A. Kramer
JUDGE,
COURT OF APPEALS

COMMONWEALTH OF KENTUCKY
8TH JUDICIAL CIRCUIT
WARREN CIRCUIT COURT-DIV. IV
FAMILY COURT
CATHERINE RICE HOLDERFIELD, JUDGE
CIVIL ACTION NO. 14-CI-00479

ROBBIN NELSON PETITIONER

v. ORDER GRANTING
TEMPORARY CUSTODY

HEATHER ANNE SHARP and
ROBERT ANDREW SHARP, JR. RESPONDENTS

This matter having come before the Court, the court having reviewed the entire record contained herein, and otherwise being sufficiently advised:

It is hereby ORDERED AND ADJUDGED Respondent Heather Anne Sharp is hereby granted temporary custody of the two minor children (A.K.S & R.A.S. III) effectively immediately. The Petitioner shall deliver the children to Respondent Heather Anne Sharp at 6:00 p.m. on March 21, 2017, at Sad Sam's Fireworks Outlet in Cross Plains, Tennessee, off Exit 112 on Interstate 65.

This the 21st day of March, 2017.

/s/ Catherine Rice Holderfield
CATHERINE RICE
HOLDERFIELD, JUDGE
WARREN CIRCUIT
COURT, DIV. IV
FAMILY COURT

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TENDERED BY:

Casey A. Hixson

Clerk send copies to:

Casey A. Hixson

Peter Gray Whiteley

Christopher T. Davenport

Marcia Sparks

**COMMONWEALTH OF KENTUCKY
8TH JUDICIAL CIRCUIT
WARREN CIRCUIT COURT, DIVISION IV
FAMILY COURT
CATHERINE RICE HOLDERFIELD, JUDGE
CIVIL ACTION NO. 14-CI-00479**

**IN RE: THE VERIFIED PETITION
FOR DEFACUTO CUSTODY
THE INTEREST OF R.A.S, III,
a minor child
A.K.S., a minor child**

**ROBBIN NELSON PETITIONER
V -SUA SPONTE ORDER-
ROBERT ANDREW SHARP, JR.
and HEATHER ANNE SHARP RESPONDENTS**

This matter, having come before the Court upon sua sponte review, the Court having had multiple hearings in this action and the family's related actions, over the past several years, the Court having been made aware at a recent hearing that adoption proceedings have been filed in another state even though the proposed adoptive parent has failed to comply with this Court's orders, may be evading service with regards to a long pending show cause order regarding the court ordered visitation for the mother of the children, no UCCJEA hearing has occurred as required by Kentucky Revised Statutes, the Petitioner having obtained de facto custody under somewhat questionable but

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reportedly agreed circumstances, and the Court being otherwise sufficiently advised;

IT IS HEREBY ORDERED that this Court specifically asserts and retains jurisdiction of this action and the actions related thereto in Warren Circuit Family Court.

This 8th day of June, 2016.

/s/ Catherine Rice Holderfield
CATHERINE RICE
HOLDERFIELD, JUDGE
WARREN CIRCUIT
COURT, DIVISION IV
FAMILY COURT

Clerk distribute copies to all parties:
Hon. John McCracken [for Pet Robbin Nelson]
Hon. Casey Hixson [for Resp Heather Sharp]
Respondent-Robert Andrew Sharp, Jr.

**IN THE FOURTH CIRCUIT COURT FOR
DAVIDSON COUNTY, TENNESSEE**

**ROBBI KELLY NELSON)
AND HUSBAND,)
JERRY WAYNE WELLS,)
PETITIONERS,)
AND) ADOPTION CASE
ROBERT ANDREW) NO. 15A118
SHARP, JR.,)
CO-PETITIONER,)
HEATHER ANNE SHARP,)
RESPONDENT)**

**ORDER APPOINTING GUARDIAN
AD LITEM AND SUSPENDING VISITATION**

This Order is entered in response to the Motion of Petitioners Robbin Kelly Nelson and, Jerry Wayne Wells and Co-Petitioner Robert Andrew Sharp, Jr. (Mr. Sharp)/ heard on May 13, 2016 pursuant to Tenn. R. Civ. Proc. 40A to appoint a Guardian ad Litem in this cause and to suspend visitation by the Respondent, Heather Anne Sharp pending observation by the Guardian ad Litem of the conditions and best interests of the children sought to be adopted.

Pursuant to Tennessee Code Annotated §36-1-116(f)(1), this Court has had exclusive jurisdiction of all matters pertaining to the children sought to be adopted in this cause since November 25, 2015, the date of the filing of the Petition for Guardianship,

Termination of Parental Rights and Adoption by the Petitioners and Co-Petitioner (the “Petition”)

Further, pursuant to Tennessee Code Annotated §36-1-116(h), the filing of the Petition constituted the commencement of a custody proceeding for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) codified in Tennessee Code Annotated §36-6-201 *et seq.*, and Tennessee is the home state of the children in this proceeding. Therefore, this Court also has had jurisdiction of this child custody proceeding pursuant to Tennessee Code Annotated §36-6-216(a) since November 25, 2015, the date of the filing of the Petition.

Accordingly, any order entered by any other court after November 25, 2015, including orders by the 8th Judicial Circuit Warren Circuit Court – Div. IV Family Court of the Commonwealth of Kentucky, is unenforceable for want of jurisdiction.

This Court customarily appoints a Guardian ad Litem in a contested adoption case, and because the verified Petition and affidavits filed in this cause raise concerns regarding the children’s best interests that may not be adequately protected by the parties, the Court has determined that separate representation of the children by a Guardian ad Litem is warranted pursuant to Tenn. R. Civ. Proc. 40A. Accordingly, the Court hereby appoints Valerie M. Cantrell, Supreme Court No. 14640 as Guardian ad Litem to represent the best interest of the children in this cause, the cost of which

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will be born equally by the Petitioners and the Respondent.

The Court also finds that the concerns raised in the verified Petition and affidavits filed in this cause justify a suspension of any visitation by the Respondent with the children for a period of two (2) weeks following the entry of this Order so that the Guardian ad Litem may make a preliminary assessment of the children's best interests with respect to visitation. Such suspension is hereby ordered and may be extended by motion of the Petitioners or the Guardian ad Litem.

IT IS SO ORDERED this 17th of May, 2016.

/s/ Philip E. Smith
Philip E. Smith, Circuit
Court Judge

Approved for entry:

/s/ Robert D. Tuke
Robert D. Tuke,
BPR No. 04650
TRAUGER & TUKE
222 Fourth Avenue North
Nashville, Tennessee 37219
615-256-8585
rtuke@tntlaw.net

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of May, 2016, a copy of the foregoing Order Appointing Guardian Ad Litem and Suspending Visitation was mailed to:

Laura A. Frost, Attorney for Respondent Heather Anne Sharp, via U.S. Mail, postage prepaid, at 131A South Water Avenue, Gallatin, TN 37066, and emailed to Laura Frost at laura@laurafrostlaw.com; and

Valerie M. Cantrell, Guardian ad Litem, via U.S. Mail, postage prepaid, at 381 Mallory Station Rd., Ste. 202, Franklin, TN 37967, and emailed to Valerie Cantrell at valerie.cantrell22@gmail.com.

/s/ Robert D. Tuke
Robert D. Tuke

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**COMMONWEALTH OF KENTUCKY
8TH JUDICIAL CIRCUIT
WARREN CIRCUIT COURT- DIVISION IV
FAMILY COURT
JUDGE, HON CATHERINE RICE
HOLDERFIELD
CASE NO. 14-CI-00479**

**IN RE: THE INTEREST OF
R.A.S. III, a minor child
A.K.S., a minor child**

ROBBIN NELSON PETITIONER

VS. **ORDER ON RELOCATION OF STATE**

ROBERT ANDREW SHARP,
JR. and HEATHER ANNE
SHARP RESPONDENTS

A Hearing was held pursuant to Respondent, Heather Sharp's objection to Petitioner moving to Nashville. After hearing evidence the Court overrules Respondent's objection. Petitioner shall be allowed to move to Nashville and the parties shall maintain a status quo as relates to visitation.

Entered this 2nd day of November, 2015

/s/ Catherine Rice Holderfield
Hon. Catherine Rice Holderfield,
Judge
Warren Circuit Court, Div. IV

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Tendered by:

/s/ [Illegible]
John H. McCracken

TENDERED
DATE: 10-30-15
McCracken

5/15/14 DISTRIBUTION

John H. McCracken and Associates, PLLC
1823 McIntosh St, Ste. 110
P.O. Box 27
Bowling Green, KY 42102-0027

Robert and Heather Sharp
2448 Old Union Church Road
Bowling Green, KY 42104

**COMMONWEALTH OF KENTUCKY
8TH JUDICIAL CIRCUIT
WARREN CIRCUIT COURT- DIVISION IV
FAMILY COURT TWO
HON. CATHERINE RICE HOLDERFIELD, JUDGE
CASE ACTION NO. 14-CI-00479**

IN RE: THE INTEREST OF
R.A.S. III, a minor child
A.K.S., a minor child

ROBBIN NELSON PETITIONER

VS. **FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
JUDGMENT OF DE FACTOR AND
PERMANENT CUSTODY**

ROBERT ANDREW SHARP,
JR. and HEATHER ANNE
SHARP RESPONDENTS

This matter has been brought before the Court pursuant to a petition for de facto custody status, custody, visitation and child support of two minor children, R.A.S., III and A.K.S., and the Court having reviewed the agreement makes the following findings of facts and conclusions of law.

FINDINGS OF FACT

1. The Court finds that Robert Andrew Sharp, Jr. and Heather Anne Sharp are the parents of two minor children, R.A.S., III and A.K.S. The petitioner, is the mother of Respondent, Robert Andrew Sharp, Jr. and

is the paternal grandmother of the minor children. All parties live in Warren County, Kentucky.

2. The Court finds that the minor children have lived with the Petitioner and her husband for a continuous period of more than one (1) year.

3. The Court also finds that Petitioner bee been the primary financial caregiver for R.A.S., III. and A.K.S. for a continuous period of more one (1) year.

4. The Court finds that the Petitioner has been the emotional caregiver for R.A.S., III and A.K.S. for a continuous period of more than one (1) year.

5. Respondent, Robert Andrew Sharp, Jr., Currently suffers from a number of medical conditions, including reverse narcolepsy and cataplexy, which make him unable to adequately care for the children on a full time basis. He is taking medication to help combat his medical condition, but these medications also have other side effects that make it unsafe for the children to be alone with him at this time when under influence of the medication.

6. Respondent, Heather Anne Sharp, struggles with depression. She has been unable to bond with the children since their respective births. These circumstances have led Respondents to place the children with Petitioner to live and use since the children were just weeks old. Several years ago respondent Heather Sharp suffered a head injury at Paris Island and still to this day struggles from this injury.

7. The Court finds that the parents have signed a custody agreement granting petitioner sole custody. The Petitioner has tested that she desires to be the custodian of these children. The Court further finds that these children have been cared for, nurtured and supported by Petitioner since these children were weeks old.

8. The Court finds that the minor children are well adjusted into the Petitioner's home and that it is in their best interest that the Petitioner be designated as De Facto Custodian and that she be awarded sole custody pursuant to the testimony received and the agreement signed by all parties.

9. The Court finds good cause to set child support for both Respondents at \$0 dollars monthly. The Court further finds that the petitioner has not only been proving financially for the minor children but also to each Respondent parent. Good cause exists to deviate from the child support guidelines.

CONCLUSIONS OF LAW

1. The Court concludes that it has jurisdiction in this matter and that the parties are properly before the Court.

2. The Court finds and concludes that the custody agreement relating to R.A.S., III and A.K.S. is reasonable and in the best interests of these children. Therefore, the Court concludes that Petitioner Robbin Nelson has satisfied the requirements of KRS

403.270(1) and (2) and is granted the status of a de facto custodian of these minor children.

3. The Court concludes that it is in the best interests of R.A.S., Ill and A.K.S. that permanent sole custody be granted to Robbin Nelson and that is so ordered. The Court concludes that reasonable visitation will occur by agreement of the parties.

4. The Court concludes that the Petitioner has sufficient financial means to adequately provide for these two minor children and the Court believes that it is appropriate to deviate from the child support guidelines and that no child support shall be due from either of the Respondents.

DECREE

THE COURT HEREBY ORDERS THE FOLLOWING:

1. That the Petitioner, Robbin Nelson shall be designated the De Facto Custodian of R.A.S., III and A.K.S.;
2. That the Petitioner, Robbin Nelson is granted sole custody of R.A.S., III and A.K.S. and that reasonable visitation will occur by agreement of the parties.
3. That both Respondent's child support shall be set at \$0 dollars monthly.

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SO ORDERED THIS 14th DAY OF May, 2014.

/s/ Catherine Rice Holderfield
JUDGE, HON. CATHERINE
RICE HOLDERFIELD,
WARREN CIRCUIT COURT,
DIVISION III
FAMILY COURT

Tendered by:

/s/ [Illegible]
John H. McCracken

**COMMONWEALTH OF KENTUCKY
8TH JUDICIAL CIRCUIT
WARREN CIRCUIT COURT-DIVISION IV
FAMILY COURT
HON. CATHERINE RICE HOLDERFIELD, JUDGE
CASE ACTION NO. 14-CI-00479**

IN RE: THE INTEREST OF
R.A.S. III, a minor child
A.K.S., a minor child

ROBBIN NELSON PETITIONER
VS. **AGREEMENT OF DE FACTO
CUSTODIAN CHILD CUSTODY
AND CHILD SUPPORT**

ROBERT ANDREW SHARP,
JR. and HEATHER ANNE
SHARP RESPONDENTS

Comes the Petitioner Robbin Nelson, by Counsel, and Respondents Robert Andrew Sharp, Jr. and Heather Anne Sharp, pro se, and enter into the following agreement relating to the de facto custody stains of Robbin Nelson, custody of R.A.S., and A.K.S., minor children and child support relating to their children:

WHEREAS, the parties agree that Robert Andrew Sharp, Jr. and Heather Anne Sharp are the parents of R.A.S., III and A.K.S. and that Robbin Nelson is the paternal grandmother of these children. The parties hereto wish to enter into an agreement relating to the above which all parties agree is in the best interests of the minor children.

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1. The Respondents Robert Andrew Sharp, Jr. and Heather Anne Sharp are the parents of R.A.S., III, and A.K.S., minor children. Nelson is the mother of Robert Andrew Sharp, Jr. and the paternal grandmother to R.A.S., III and A.K.S.
2. The parties agree that both R.A.S., III and A.K.S. have resided with Robbin Nelson since they were weeks old and that Robbin Nelson has primarily provided for these minor children's financial and nurturing care. The parties agree that Robbin Nelson satisfies the requirements of KRS 403.270(1) and (2) to be de facto custodian of both minor children and all parties agree that she has that status for these children. The children have resided with Petitioner for more than a year and Petitioner has provided for their financial needs for more than one year.
3. The parties agree that due to the circumstances surrounding medical issues with Robert Andrew Sharp, Jr. and issues that Heather Anne Sharp is experiencing are such that it is in the best interests of R.A.S. III and A.S.K. that sole custody should be granted to Robbin Nelson. All parties believe that this is in the children's best interest.
4. The parties agree that the Respondents shall have liberal visitation with R.A.S., III and A.K.S. as agreed upon by the parties.
5. The Petitioner, Robbin Nelson, is a hospital consultant, who is also a registered nurse. The parties agree that her income is sufficient to meet all of the needs both of these children and they agree that no

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child support shall be payable by either Respondent. The parties agree that it is appropriate to deviate from the child support guidelines due to Petitioner's income level.

This the 30th day of April, 2014.

/s/ [Illegible]
JOHN H. McCACKEN
JOHN H. McCACKEN AND
ASSOCIATES, PLLC
1823 McIntosh St., Ste. 110
P.O. Box 27
Bowling Green, KY 42102-0027
270-783-8088

VERIFICATION

I, Robbin Nelson, have read the foregoing statement and do hereby verify that they are true to my best knowledge and belief.

/s/ Robbin Nelson
ROBBIN NELSON

STATE OF KENTUCKY

COUNTY OF WARREN

Acknowledged and sworn to before me by Robbin Nelson, this the 23rd day of April, 2014.

/s/ Melinda Renee Fulcher
NOTARY PUBLIC
MY COMM. EXPIRES:
July 21, 2017

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VERIFICATION

I, Robert Andrew Sharp, Jr., have read the foregoing statement and do hereby verify that they are true to my best knowledge and belief.

/s/ Robert Andrew Sharp
ROBERT ANDREW
SHARP, JR.

STATE OF KENTUCKY
COUNTY OF WARREN

Acknowledged and sworn to before me by Heather Anne Sharp, this the 23rd day of April, 2014.

/s/ Melinda Renee Fulcher
NOTARY PUBLIC
MY COMM. EXPIRES:
July 21, 2017

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VERIFICATION

I, Heather Anne Sharp, have read the foregoing statement and do hereby verify that they are true to my best knowledge and belief.

/s/ Heather Anne Sharp
HEATHER ANNE SHARP

STATE OF KENTUCKY
COUNTY OF WARREN

Acknowledged and sworn to before me by Heather Anne Sharp, this the 23rd day of April, 2014.

/s/ Melinda Renee Fulcher
NOTARY PUBLIC
MY COMM. EXPIRES:
July 21, 2017
