RENDERED: AUGUST 26 2021
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2020-SC-0526-MR

BETTY CAITLIN NICOLE SMITH — APPELLANT

V.

ON APPEAL FROM THE COURT OF APPEALS
CASE NO. 2018-CA-0504-OA
CHRISTIAN CIRCUIT COURT NO. 2020-CI-00165

HON. JASON FLEMING AND ZACHARY TAYLOR DANIEL — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

This case is an appeal of the denial of a writ of mandamus by the Court of Appeals. Betty Caitlin Nicole Smith (Smith), the Appellant, petitions this Court to grant the writ and hold that the Commonwealth of Kentucky, specifically Christian County, has jurisdiction over custody matters related to her minor child and, furthermore, that a Florida judgment of custody is void. The Court of Appeals denied the writ, finding that Smith presented no argument as to why an appeal would be an inadequate remedy in this matter.

For the following reasons, we affirm.

I. FACTUAL AND PROCEDURAL HISTORY

Smith has a child with Zachary T. Daniel (Daniel), the real party in interest. In 2013, Calloway District Court granted Smith a domestic violence

protection order (DVO) against Daniel, which expired on September 5, 2014. In 2014, Smith filed a petition against Daniel to establish paternity, custody, visitation, and support in Calloway Circuit Court. The circuit court established that Daniel was the father. The custody order was entered. In 2015, the Calloway Circuit Court granted Smith another DVO against Daniel. This DVO expired on November 25, 2018 and granted Smith temporary custody of minor child. Subsequently, Smith and the minor child moved to Madison County, Florida.

In 2016, Daniel, who lived in Tennessee, initiated dissolution proceedings in the Madison Circuit Court in Florida. Additionally, he sought a child custody determination from the Florida court. Smith contested the filing, asserting Kentucky retained exclusive jurisdiction over the child custody issue by virtue of the prior orders. Smith also claimed that her residency in Florida was only temporary and that she intended to return to Kentucky.

Citing the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the Florida court concluded that it had jurisdiction over Daniel's child custody claim because (1) neither parent had remained in Kentucky and (2) Smith and the minor child were residents of Florida. The Florida court proceeded to enter a dissolution judgment that dealt with child custody and visitation orders. Smith promptly appealed, claiming the Florida court did not give full faith and credit to the Kentucky DVO. The Florida Court of Appeals reversed and remanded the child custody and visitation portion of the judgment to the lower court and ordered them to make additional findings

concerning the Kentucky DVO and the best interest of the child. The Madison Circuit Court complied, issuing an amended judgment reasserting its determination that Florida did, in fact, have jurisdiction over the child custody matter in this case. The Florida court issued new custody and visitation orders. Smith once again appealed, but the Florida Court of Appeals affirmed the new orders on February 8, 2019.

In 2020, Smith filed a motion or petition of unknown nature regarding child custody in Calloway County, but Smith did not live there. Thus, the matter was transferred to Christian County, where Smith now resides. It is this action that underlies the petition at issue in this case. Smith's action in Christian Circuit Court is an attempt to get a Kentucky trial court to void the Florida custody order and reassert jurisdiction over the minor child's custody matters. The trial court denied Smith's request, finding that Florida did have jurisdiction to issue the child custody determination and related visitation orders. Furthermore, the Christian Circuit Judge discovered that a "simultaneous" custody proceeding had been previously filed in Maury County, Tennessee and was still an open and active case. Thus, pursuant to the UCCJEA, the trial court determined that Tennessee would be the proper forum for any custody modification.

On April 3, 2020, Smith petitioned the Court of Appeals for a writ of mandamus. On July 22, 2020, the Court of Appeals issued an order denying Smith's request for an extraordinary writ. The Court of Appeals found Smith

failed to make a compelling argument as to why an appeal would be inadequate in this matter.

Smith appealed as a matter of right. We now review.

II. ANALYSIS

The issuance of a writ is an extraordinary remedy. *Allstate Prop. & Casu. Ins. Co. v. Kleinfeld*, 568 S.W.3d 327, 331 (Ky. 2016). As explained in *Southern Fina. Life Ins. Co. v. Combs*:

> [C]ourts are decidedly loath to grant writs as a specter of injustice always hover writ proceedings. This specter is ever present because writ cases necessitate an abbreviated record which magnifies the chance of incorrect rulings that would prematurely and improperly cut off the rights of litigants.

413 S.W.3d 921, 925 (Ky. 2013) (internal citations and quotations omitted.). Thus, this Court has a two-class analysis in writ cases.

> Writ cases are divided into two classes, which are distinguished by whether the lower court allegedly is (1) acting without jurisdiction (which includes beyond its jurisdiction), or (2) acting erroneously within its jurisdiction . . . When a writ is being sought under the second class of cases, a writ may be granted upon a showing ... 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.

Id. at 926. Smith's allegations fall within the second class of writ, which deals with claims that the lower court is acting erroneously. Smith claims that the trial court erred in finding that it did not have jurisdiction over the child custody matters.

"[U]ltimately, the decision whether or not to issue a writ of prohibition is a question of judicial discretion. So review of a court's decision to issue a writ

is conducted under the abuse-of-discretion standard. That is, we will not reverse the lower court's ruling absent a finding that the determination was arbitrary, unfair, or unsupported by sound legal principles." *Appalachian Racing, LLC v. Commonwealth,* 505 S.W.3d 1,3 (Ky. 2016) (Internal citations and quotations omitted).

In this case, the writ does not meet the elements required for the second class of writs. Smith fails to show (1) the court acted erroneously; (2) there exists no adequate remedy by appeal or otherwise; and (3) great injustice and irreparable injury will result.

Like the Court of Appeals, we focus on the second requirement for a second class of writs—adequate remedy by appeal. When a court is acting within its subject-matter jurisdiction, the petitioner must show as "an absolute prerequisite" to the issuance of a writ by a court that no adequate remedy by appeal exists. *Indep. Ord. of Foresters v, Chauvin,* 175 S.W.3d 610, 615 (Ky. 2005). "No adequate remedy by appeal means that an injury to [the petitioners] could not thereafter be rectified in subsequent proceedings in the case." *Id.* at 614-615 (Internal citations and quotations omitted).

In this case, the trial court's order is final and appealable. Smith does not explain why appealing the order would be inadequate in this matter. Furthermore, we do not find that she would suffer great injustice or irreparable injury, especially since she has the right to appeal.

We reiterate that granting a writ is an extraordinary remedy and a writ should only be granted when the writ meets the strict requirements listed

above. In this case, we hold Smith failed to show a lack of adequate remedy on appeal or a great injustice and irreparable harm if the requested writ of mandamus was not granted. We hold that the Court of Appeals correctly found that Smith was not entitled to a writ.

III. CONCLUSION

For the forgoing reasons, we affirm the Court of Appeals and deny the writ of mandamus.

All sitting. All concur.

COUNSEL FOR APPELLANT:

Betty Caitlin Nicole Smith
Pro Se
130 Old Major Lane
Hopkinsville, KY 52240

COUNSEL FOR APPELLEE:

Zachary Taylor Daniel
2914 Carters Creek Station Rd.
Columbia, TN 38401

Commonwealth of Kentucky

Court of Appeals

NO. 2020-CA-000504-OA

BETTY CAITLIN NICOLE SMITH — PETITIONER

v.

AN ORIGINAL ACTION ARISING FROM
CHRISTIAN CIRCUIT COURT
ACTION NO. 20-CI-00165

HONORABLE JASON FLEMING,
JUDGE, CHRISTIAN CIRCUIT COURT — RESPONDENT

AND

ZACHARY T. DANIEL — REAL PARTY IN INTEREST

ORDER DENYING
EXTRAORDINARY WRIT

** ** ** ** ** ** ** **

BEFORE: ACREE, COMBS, AND GOODWINE, JUDGES.

Petitioner, Betty Caitlin Nicole Smith, has moved to proceed *in forma pauperis* in this action seeking a writ. No objection was filed. Having reviewed the motion, it is hereby GRANTED, and Smith shall be permitted to proceed without cost. The tendered petition and responses shall be FILED. Smith has moved for leave to file a reply to Judge Fleming's response and has tendered the same. The motion is GRANTED, and the reply shall be FILED. Additionally, Smith has tendered a motion to

file an original exhibit and a "motion to produce." These motions shall be FILED and DENIED.

In the petition, Smith requests this Court to grant her a writ and find that Kentucky has jurisdiction over custody matters related to her child and that a Florida judgment of custody is void. Respondent Judge Fleming has filed a response, refraining from taking a position on the merits of the petition, but supplementing the record with copies of orders entered below. Zachary T. Daniel, the real party in interest, has filed a response objecting. The Court, having reviewed the petition and the responses, and being in all ways sufficiently advised, hereby DENIES the petition.

Smith and Daniel have a child in common. In 2013, Smith sought and was granted a domestic violence protection order (DVO) against Daniel. Calloway District Case 13-D-00044-001. The DVO expired September 5, 2014. In 2014, Smith filed a petition against Daniel to establish paternity, custody, visitation, and support. Calloway Circuit Case 14-CI-00113. The court determined Daniel was the father and entered a custody order. In 2015, Smith sought and was granted a second DVO against Daniel that was valid for three years, expiring on November 25, 2018. Calloway District Case 13-D-00044-002. The DVO ordered no contact and granted Smith temporary custody of the parties' minor child. Thereafter, Smith and the child moved to Florida.

In 2016, Daniel, who was then a resident of Tennessee, initiated dissolution proceedings in Florida and therein sought a child custody determination. Smith repeatedly challenged the Florida court's jurisdiction over child custody claims. Smith's position was that Kentucky retained exclusive jurisdiction by virtue of the prior custody

determinations and her continued status as a Kentucky resident. Smith claimed she was only living in Florida on a temporary basis and that she intended to return to Kentucky.

The Florida court, citing the Uniform Child Custody Jurisdiction and Enforcement Act, ultimately concluded it had jurisdiction over Daniel's child custody claim finding that neither the parents nor the child remained in Kentucky and that Smith and the child were residents of Florida. The Florida court entered a dissolution judgment which included child custody and visitation orders. Smith appealed on the basis the court had not given full faith and credit to the Kentucky DVO. The Florida Court of Appeals reversed and remanded the child custody and visitation portions of the judgment for the lower court to make additional findings concerning the Kentucky DVO and the best interests of the child. The lower court issued an amended judgment reasserting its determination that Florida had jurisdiction over child custody matters and made custody and visitation orders. Smith appealed, but the judgment was affirmed on February 8, 2019.

In 2020, Smith filed a motion or petition of an unknown nature regarding child custody in Calloway Circuit Case 14-CI-00113.[1] The matter was transferred to Christian County, where Smith now resides, and is the action underlying this petition. It appears that the essence of Smith's Christian Circuit action was for Kentucky to void the Florida custody order and reassert jurisdiction over child custody matters. The Christian

[1] The Court notes that the petition herein fails to provide even the most basic information concerning the proceedings before the Christian Circuit Court including identifying the matters at issue or the rulings there on. The information identified in this order was ascertained solely through Judge Fleming's response.

Circuit Court denied Smith's request, finding that Florida had properly asserted jurisdiction when it rendered its child custody determination and that Tennessee, where child custody proceedings are currently underway, was now the proper forum for modification issues. This petition followed.

There are two classes of writs. The first class involves claims that the lower court is proceeding without subject matter jurisdiction. *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 second class involves claims that the lower court is acting or about to act erroneously within its jurisdiction. *Id.*

Smith is proceeding under the second class as her argument presumably is that the Christian Circuit Court erred in finding it did not have jurisdiction over child custody matters. Accordingly, Smith must show: 1) the court has acted erroneously; 2) there exists no adequate remedy by appeal or otherwise; and 3) great injustice and irreparable injury, or, in certain special cases, that a substantial miscarriage of justice will result, and correction of the error is necessary and appropriate in the interest of orderly judicial administration. *Hoskins*, 150 S.W.3d at 10; *Bender v. Eaton*, 343 S.W.2d 799, 801 (Ky. 1961).

Where the circuit court is acting within its subject-matter jurisdiction, it is "an absolute prerequisite" to the issuance of a writ that petitioners demonstrate 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 petitioners] 'could not thereafter be rectified in subsequent proceedings in the case.'"

Id. at 614-15 (quoting *Bender*, 343 S.W.2d at 802).

Herein, Smith presented no argument as to why an appeal would be inadequate, and it is not this Court's function to craft arguments for litigants. The Christian Circuit Court has entered a final and appealable order dismissing Smith's claims. Because there is a right to appeal the contested order, Smith has failed to demonstrate her entitlement to a writ.

For the above stated reasons, the petition for a writ is hereby DENIED.

ENTERED: JUL 22 2020

Pamela R. Goodwine

JUDGE, COURT OF APPEALS

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-4240

BETTY CAITLIN NICOLE SMITH,

Appellant,

v.

ZACHARY TAYLOR DANIEL,

Appellee.

On appeal from the Circuit Court for Madison County.
E. Bailey Browning, III, Judge.

June 4, 2018

PER CURIAM.

Appellant, the mother, appeals that portion of the "Final Judgment of Dissolution of Marriage with Dependent or Minor Child" ordering shared parental responsibility and granting supervised parenting time between the parties' minor child and Appellee, the father. Because those provisions of the final judgment ignore an unexpired Kentucky Domestic Violence Order of Protection entered against the father, and for additional reasons discussed below, we reverse.

A trial court has "broad discretion" in determining time-sharing matters and parenting plans, and its decision will not be disturbed on appeal absent an abuse of discretion. *J.N.S. v. A.M.A.*, 194 So. 3d 559, 560 (Fla. 5th DCA 2016); *Miller v. Miller*,

842 So. 2d 168, 169 (Fla. 1st DCA 2003). In the present case, however, we hold the trial court did abuse its discretion by failing to accord full faith and credit due the Kentucky Domestic Violence Order of Protection under 18 U.S.C. § 2265(a)[1] and section 741.315(2), Florida Statutes (2016).[2] *See also* § 61.526(1), Fla. Stat. (2016).[3] Significantly, the Order of Protection prohibits the father from coming within 500 feet of the minor child. By granting the father "parenting time," even though supervised, the final order directly contravenes the explicit terms of the Order of Protection.

Furthermore, the Order of Protection was direct and unrefuted evidence of domestic violence against the mother and the minor child by the father. Although the trial court did find that domestic violence occurred during the marriage because the father

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[1] 18 U.S.C. § 2265(a) states in pertinent part: "Any protection order that is consistent with subsection (b) of this section by the court of one State . . . shall be accorded full faith and credit by the court of another State . . . and enforced by the court . . . of the other State . . . ." Subsection (b) requires that the issuing state shall have had jurisdiction over the parties and given reasonable notice and an opportunity to be heard to the party against whom the order is sought. Here, the Order of Protection recites that the court had jurisdiction and Appellee ("Respondent" per the order) "was provided with reasonable notice and opportunity to be heard." Appellee has not challenged the order in any way.

[2] Section 741.315(2), Fla. Stat., states:

> Pursuant to 18 U.S.C. s. 2265, an injunction for protection against domestic violence issued by a court of a foreign state must be accorded full faith and credit by the courts of this state and enforced by a law enforcement agency as if it were the order of a Florida court . . . .

[3] Section 61.526(1), Fla. Stat.—appearing in Florida's Uniform Child Custody Jurisdiction and Enforcement Act—requires a Florida court to "recognize and enforce a child custody determination of a court of another state . . . ." The Kentucky Domestic Violence Order of Protection grants temporary custody of the minor child to Appellant.

did not refute the mother's allegations of the violence, there is nothing in the final order suggesting that the trial court seriously considered this finding in carrying out its duty to determine the best interests of the child according to the provisions of sections 61.13(2)(c)2.[4] and 61.13(3)(m),[5] Florida Statutes (2016). Nor can the court's pronouncement that the father should enjoy shared parental responsibility and visitation with the minor child be reconciled to its crediting of the mother's testimony that the domestic violence "did substantial emotional damage to the Child" and "that the Child's conditions and [medical] status require special consideration and attention by the Court."

In addition, apart from giving a passing mention to domestic violence, which, as previously noted, is a factor to be considered under section 61.13(3)(m), the final order is otherwise devoid of any suggestion that the trial court considered the remaining factors in section 61.13(3)(a)-(t), Florida Statutes (2016), in order to determine the best interests of the child. *See Bainbridge v. Pratt*, 68 So. 3d 310, 313 (Fla. 1st DCA 2011) (concluding that while "there is no statutory requirement that a trial court engage in a discussion as to each of the factors [in section 61.13(3)], a discussion of the relevant factors can be helpful in determining whether the trial court's judgment is supported by competent, substantial evidence"). For this reason, we conclude that the trial court's award of shared parental responsibility and parenting time is not based on competent, substantial evidence.

Thus, we reverse that portion of the "Final Judgment of Dissolution of Marriage with Dependent or Minor Child" relating to shared parental responsibility and parenting time. We remand the case to the trial court with instructions for it to reconsider, and if necessary, to take additional evidence on and make findings

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[4] Section 61.13(2)(c)2., Florida Statutes, provides that when considering whether to order shared parental responsibility and time-sharing, "the court shall consider evidence of domestic violence . . . as evidence of detriment to the child."

[5] Section 61.13(3)(m), Florida Statutes, states that one of the factors to be evaluated in determining the best interests of the child is "[e]vidence of domestic violence . . . ."

concerning, the Kentucky Domestic Violence Protection Order and the best interests of the child, as those factors directly affect the issues of shared parental responsibility and parenting time.

AFFIRMED, in part, REVERSED, in part, and REMANDED for further proceedings.

LEWIS, ROBERTS, and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Betty Smith, pro se, Appellant.

Zachary Daniel, pro se, Appellee.

M A N D A T E

from

FIRST DISTRICT COURT OF APPEAL

STATE OF FLORIDA

This case having been brought to the Court, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that further proceedings, if required, be had in accordance with the opinion of this Court, and with the rules of procedure, and laws of the State of Florida.

WITNESS the Honorable Bradford L. Thomas, Chief Judge, of the District Court of Appeal of Florida, First District, and the seal of said Court at Tallahassee, Florida, on this day.

June 25, 2018

Betty Caitlin Nicole Smith v.
Zachary Taylor Daniel

DCA Case No.: 1D17-4240
Lower Tribunal Case No.: 16- 249 DR

KRISTINA SAMUELS, CLERK
District Court of Appeal of Florida, First District

ms
Mandate and opinion to: Hon. William "Billy" D. Washington, Clerk
cc: (without attached opinion)
Betty Caitlin Nicole Smith Zachary Taylor Daniel

Appendix D

U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)).

Only the Court can change this order.

Appendix E

Case No. 13-D-00044-002

ADDITIONAL FINDINGS:

☑ For the Petitioner against the above-named Respondent in that it was established, by a preponderance of the evidence, that an act(s) of domestic violence or abuse has occurred and may again occur; or

☐ For the Respondent in that it was not established, by a preponderance of the evidence, that an act(s) of domestic violence or abuse has occurred and may again occur; or

☐ The ☐ Petitioner ☐ Respondent has filed a motion to amend the Domestic Violence Order dated _____.

ADDITIONAL TERMS OF ORDER:

That the above-named Respondent surrender to the Court, or to the officer serving the order, Respondent's Kentucky license to carry concealed firearms or other deadly weapons pursuant to KRS 237.110(13)(k).

☑ Kentucky license to carry surrendered to Court.

☐ That the Petition be ☐ Dismissed. (*Complete the following only if EPO was issued*) With respect to the Emergency Order of Protection issued by this Court on _____, 2___: (*check one*)

☐ The Court hereby WITHDRAWS the Emergency Order of Protection. Additional Findings: _____

☐ The Emergency Order of Protection was not served within six (6) months from the date of its issuance and, in accordance with KRS 403.740(6), is hereby RESCINDED without prejudice.

☐ That the Motion to Amend be ☐ Denied.

☐ That the Motion to Amend is Sustained. ☐ That the prior order is amended pursuant to a show cause hearing. The prior order is amended and all prior inconsistent provisions of such prior order are superseded as follows:

☑ That the above-named Respondent is restrained from any contact or communication with the above-named Petitioner.

☑ That Respondent shall remain at all times and places at least 500 feet (not to exceed five hundred) away from Petitioner, Petitioner's minor child(ren), and Petitioner's family or household;
☐ except as follows:

☐ That, Petitioner having established specific demonstrable danger, the above-named Respondent be restrained from going to or within the distance(s) specified of the location(s) described below:

Location: _____ feet.
Location: _____ feet.
Location: _____ feet.
Location: _____ feet.
☐ except as follows:

☑ That the above-named Respondent be restrained from disposing of, or damaging, any property of the parties.

☑ That the above-named Respondent vacate the residence shared by the parties located at 217 Cross Spann Rd, Murray, KY 42071 (specific address)

☑ In accordance with the criteria of KRS 403.270, 403.320, and 403.822, the Uniform Child Custody Jurisdiction and Enforcement Act and 28 U.S.C.A. Section 1738A, temporary custody of:

M[redacted] S[redacted], son, DOB 7/11/2013

Appendix E
(List names, ages and sex of each child)

be awarded to Petitioner, Betty Caitlyn Smith.

Case No. 13-D-00044-002

☐ That the above-named Respondent is ordered to pay temporary support in the amount of $ _____ as set forth in form AOC 152 Kentucky Uniform Child Support Order and/or Wage/Benefit Withholding Order for Kentucky Employers.

(AOC 152 shall also be used if child support is ordered.)

☐ That the above-named Respondent participate in available counseling services, described as _____.

☐ In order to assist in eliminating future acts of domestic violence and abuse.

_____

☐ **(To be used only in dissolution or custody action)**
That the court finds that the victim has requested mediation, and the victim's request is voluntary and not the result of coercion and that mediation is a realistic and viable alternative to or adjunct to the issuance of this order; therefore, available mediation services be ordered as follows: _____

_____

The terms of this order shall not exceed three (3) years from date of issue pursuant to KRS 403.750(2). The Petitioner may return to the court, which issued this order, before expiration of this order to request that it be reissued for an additional period not to exceed three (3) years. **The number of times this Order may be reissued shall not be limited. KRS 403.750(2).**

Violation of this order shall constitute contempt of this Court and may result in criminal charges and/or imposition of a global positioning monitoring system device. Any peace officer shall arrest the Respondent without a warrant upon probable cause that a violation of this order has occurred. Pursuant to 18 U.S.C. Section 922(g)(8), it may be a federal violation to purchase, receive or possess a firearm or ammunition while subject to this order.

11/25/15
Date

Judge

Notice: If your Order prohibits contact, you can be arrested for having contact with the Petitioner, even if that person agrees to the contact.

Copies to:
Court file
Petitioner
Respondent
Court clerk in county of Petitioner's usual residence, if different.
Law enforcement agency/dispatch center responsible for LINK entry.
Law enforcement agency(cies) designated for service.
Local Department for Community Based Services, CHFS

Ensure entries in boxes are complete and legible. Without correct information in each box, order MAY NOT be entered into LINK.

I, LINDA AVERY, CLERK OF THE CALLOWAY CIRCUIT COURT
HEREBY CERTIFY THAT THE ABOVE Order IS A
TRUE AND CORRECT COPY AS FOUND OF RECORD IN MY OFFICE
Calloway THIS THE 23 DAY OF Aug 2018
Linda Avery CLERK