Commonwealth of Kentucky

Court of Appeals

NO. 2026-CA-1141-OA

KIMBERLY JOHNSON — PETITIONER

AN ORIGINAL ACTION
v. ARISING FROM JEFFERSON CIRCUIT COURT
ACTION NO. 26-CI-006188

HON. ANN BAILEY SMITH — RESPONDENT

AND

EDUCATION PROFESSIONAL STANDARDS BOARD AND ROBBIE FLETCHER, COMMISSIONER OF THE KENTUCKY DEPARTMENT OF EDUCATION — REAL PARTIES IN INTEREST

ORDER
DENYING

** ** ** ** **

BEFORE: CALDWELL, ECKERLE, AND L. JONES, JUDGES.

Petitioner, Kimberly Johnson (Johnson), *pro se*, filed the above-styled original action pursuant to RAP[1] 60 seeking a writ of mandamus directing the Hon. Ann Bailey Smith, judge of the Jefferson Circuit Court, Division Thirteen, to order the real party in interest, the Education Professional Standards Board (EPSB), to transmit the administrative record, rule on Johnson's motion to stay the EPSB's final order, and "rule on multiple, dispositive constitutional defects in the [EPSB's] Final Order[.]" On September 29, 2026, EPSB moved this Court to impose sanctions under RAP 11.[2] Johnson then moved the Court for leave to file a reply to EPSB's response and motion on September 30, 2026.

Having reviewed the record, and being otherwise sufficiently advised, IT IS HEREBY ORDERED that the petition for writ of mandamus is DENIED. Johnson's motion for leave to file a reply and response to EPSB's motion for sanctions is GRANTED. The Clerk of the Court of Appeals is DIRECTED to FILE Johnson's tendered reply to EPSB's response and motion for sanctions. Finally, EPSB's motion for sanctions is DENIED.

[1] Kentucky Rules of Appellate Procedure.

[2] Real Party in Interest's Response to Petition for Writ of Mandamus and Motion for Sanctions.

I. BACKGROUND

This matter arises out of an administrative action before the EPSB. Twenty-nine counts, comprising eight factual allegations, were brought against Johnson related to her actions as a counselor at Maupin Elementary.[3] Of these allegations, the hearing officer found Johnson had violated KRS[4] 161.120(1)(h) by not timely scheduling a 504 hearing for a student with an applicable medical condition; and violated 16 KAR[5] 1:020, Section 1, (3)(c)(1) and (2) by creating a hostile work environment. On June 22, 2026, EPSB voted to permanently revoke Johnson's certificates for "School Counselor, All Grades" and "Instructional Leadership – Principal All Grades, Level 2." EPSB suspended Johnson's other certificates for 90 days. EPSB asserts that Johnson's suspension has ended. There is no indication in the limited record before us that Johnson has undertaken the requisite steps to reinstate the suspended certificates.

On July 16, 2026, Johnson filed for judicial review in Jefferson Circuit Court. She simultaneously moved for a restraining order and temporary injunction, which was denied by order issued on July 24, 2026. There are four pending motions by Johnson before the trial court: A motion to compel

[3] We may take judicial notice of underlying proceedings. *Polley v. Allen*, 132 S.W.3d 223, 226 (Ky. App. 2004).

[4] Kentucky Revised Statutes.

[5] Kentucky Administrative Regulations.

transmission of the administrative record, a motion to strike portions of EPSB's answer, a motion for expedited ruling on petitioner's motion to stay, and a supplement to the motion for expedited ruling. These motions were heard during motion hour on September 8, 2026. The trial court also heard a motion to dismiss by EPSB on September 29, 2026. The trial court instructed Johnson to file a brief by October 15, 2026, and EPSB to file their responsive brief by October 30, 2026. Johnson timely filed her brief.

On September 9, 2026, Johnson initiated this original action for a writ of mandamus and simultaneously moved for emergency relief. Her motion was denied by Order issued September 10, 2026. EPSB then moved this Court for sanctions under RAP 11, and Johnson moved for leave to file a reply to EPSB's response and motion for sanctions. While this Court does not ordinarily permit the filing of replies, Johnson is entitled to respond to EPSB's motion under RAP 7. Therefore, the Clerk is instructed to file Johnson's reply and response tendered September 30, 2026.[6]

II. ANALYSIS

Writs of mandamus are an extreme remedy uncommonly issued by the courts. Johson does not dispute the Jefferson Circuit Court's jurisdiction in this

[6] Pursuant to RAP 60(D), Respondent has elected not to file a response. *See* RAP 60(D) ("The party against whom relief is sought . . . may . . . file a response[.]").

case. Therefore, Johnson seeks a writ of the second class, which requires "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." *Hoskins v. Maricle*, 150 S.W.3d 1, 10 (Ky. 2004). Johnson must articulate a great and irreparable injury and establish that there is no adequate remedy by appeal before this Court will address the substance of her motion. *Fritsch v. Caudill*, 146 S.W.3d 926 (Ky. 2004) (citing *Bender v. Eaton*, 343 S.W.2d 799 (Ky. 1971)). A great and irreparable injury is one of a "ruinous nature." *Robertson v. Burdette*, 397 S.W.3d 886, 891 (Ky. 2013). Of Johnson's three requests, the first two have been rendered moot by the issuance of EPSB's final order on July 1, 2026, and the filing of the administrative record under seal on October 1, 2026.

This leaves only Johnson's request that we order the trial court to rule on "multiple dispositive, constitutional defects in the Final Order[.]" Johnson's Pet. for Writ of Mandamus at 2. Johnson's principal concern is that the trial court is not moving expeditiously. *Id*. at 4-6 and 8-16. That Johnson has not received immediate relief as result of her litigation is neither uncommon nor a great and irreparable injury. As the Kentucky Supreme Court observed in *Ison v. Bradley*,

> Thus, the delay incident to litigation and appeal by litigants who may be financially distressed cannot be considered as unjust, does not constitute an irreparable injury, and is not a miscarriage of justice.

Ison v. Bradley, 333 S.W.2d 784 (Ky. 1960). Writs of the second class also require some aspect of injustice by the trial court. *Schaetzley v. Wright*, 271 S.W.2d 885 (Ky. 1954). Participation in litigation does not rise to the level of great and irreparable injury and does not evince injustice on the part of the trial court. *See Fritch*, 146 S.W.3d at 930 ("Inconvenience, expense, annoyance, and other undesirable aspects of litigation may be present, but great and irreparable injury is not."). Further, alternative relief is available to Johnson as she may appeal any final judgment of the trial court should it not rule in her favor. *See Gilbert v. McDonald-Burkman*, 320 S.W.3d 79 (Ky. 2010) ("[T]he lack of an adequate remedy by appeal is the one requirement that is set in stone and unavoidable.").

Johnson has an adequate remedy on appeal and has failed to show great and irreparable harm. Because these absolute prerequisites to the issuance of a writ of the second class have not been met, this ends our inquiry. We do not reach the merits of Johnson's claims, and nothing contained in this Order should be construed as addressing the merits of the trial court's decisions.

III. SANCTIONS

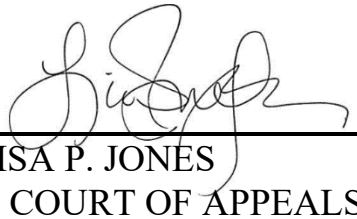
EPSB moves this Court to impose sanctions on Johnson in accordance with RAP 11. While we have previously admonished Johnson to familiarize herself with RAP 11 and abide by its strictures, the filings EPSB principally complains of were made in the Jefferson Circuit Court case. Johnson's actions

before this Court have not yet risen to a level warranting sanctions, though we caution her, again, to familiarize herself with RAP 11 and make certain her filings comport with its requirements.

IV. CONCLUSION

WHEREFORE, the Petition for Writ of Mandamus is DENIED. The motion for leave to file a reply to EPSB's response and motion for sanctions is GRANTED. The motion for sanctions is DENIED.

ENTERED: November 9, 2026



HON. LISA P. JONES
JUDGE, COURT OF APPEALS