

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000849-MR

RICHARD ARNETT

APPELLANT

v. APPEAL FROM CALLOWAY CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 11-CI-00092

HONORABLE RANDALL A. HUTCHENS
AND KENNETH V. ANDERSON, JR.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, KELLER AND STUMBO, JUDGES.

KELLER, JUDGE: Richard Arnett (Richard) appeals from an order of the Calloway Circuit Court denying his petition for writ of prohibition. For the following reasons, we affirm.

FACTS

In July 2009, the Calloway District Court appointed Richard guardian of his mother, Ruby Arnett (Ruby), after determining that she was wholly disabled in managing both her personal affairs and financial resources. Thereafter, Paul Arnett, Harold Arnett, and Patsy Watson filed a petition in the Calloway District Court to remove Richard as guardian of Ruby alleging that he made fraudulent misrepresentations and mismanaged funds.

On October 12, 2009 and October 22, 2009, the Honorable Randall A. Hutchens (Judge Hutchens), conducted evidentiary hearings.¹ In an order entered on October 12, 2009, the district court ordered Richard to repay Ruby's guardianship account the amount borrowed by him on a line of credit secured by a real estate mortgage encumbering Ruby's property. In an order entered on October 22, 2009, the district court removed Richard as guardian and ordered him to file a final accounting. Kenneth V. Anderson (Anderson) was subsequently appointed as Ruby's guardian.

Thereafter, Richard filed a *pro se* appeal in the Calloway Circuit Court, and the circuit court affirmed the orders of the district court. Richard then filed a *pro se* motion for discretionary review in this Court, and this Court entered an order on October 18, 2010, denying that motion.

On February 24, 2011, Richard filed a petition for writ of prohibition in the Calloway Circuit Court alleging that the district court acted without subject

¹ We note that copies of these hearings were not included in the record on appeal.

matter jurisdiction in conducting the October 2009 evidentiary hearings and that the Appellees should be prohibited from enforcing the orders that were subsequently entered. The circuit court denied Richard's petition, and this appeal followed.

STANDARD OF REVIEW

The proper standard of review of a decision to deny a writ of prohibition “depends on the class, or category, of writ case.” *Grange Mut. Ins. Co. v. Trude*, 151 S.W.3d 803, 810 (Ky. 2004). *De novo* review is generally the proper standard where the lower court is alleged to be acting outside its jurisdiction, because jurisdiction is generally only a question of law. *Id.* Thus, we review the denial of the writ *de novo*, giving no deference to the judgment below. *Id.*

ANALYSIS

“The writ of prohibition is extraordinary in nature, and the courts of this Commonwealth have always been cautious and conservative both in entertaining petitions for and in granting such relief.” *Appalachian Reg'l Healthcare, Inc. v. Coleman*, 239 S.W.3d 49, 52 (Ky. 2007) (internal quotation omitted). As set forth in *Hoskins v. Maricle*, 150 S.W.3d 1, 10 (Ky. 2004):

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; or (2) 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.

(Emphasis in original). Richard is challenging the jurisdiction of the district court and argues that it did not have subject matter jurisdiction to enter the October 2009 orders.

We note that the purpose of a writ of prohibition is to prevent an action in the lower court from taking place. In this case, there are no allegations that the district court “*is proceeding or is about to proceed outside of its jurisdiction . . .*” *Hoskins*, 150 S.W.3d at 10 (emphasis added). The actions Richard complains of have already taken place. Specifically, the district court entered two orders that required Richard to repay the loan and removed him as guardian. There appears to be no dispute that Richard complied and repaid the loan. Therefore, there is nothing to prohibit in this case. Accordingly, a writ of prohibition was not the appropriate remedy in this case.

CONCLUSION

For the foregoing reasons, the Calloway Circuit Court’s order denying Richard’s writ of prohibition is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Paul V. Hibberd
Louisville, Kentucky

BRIEF FOR APPELLEES:

Kenneth V. Anderson, Jr.
Paducah, Kentucky