

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State ex rel. McGraw v. King

229 W. Va. 365 (2012) · Decided June 12, 2012

SUMMARY

The West Virginia Supreme Court of Appeals denied the Attorney General’s petition for a writ of prohibition seeking to compel enforcement of investigative subpoenas issued to out-of-state title-loan companies and their executive. The court held that the Attorney General had an adequate remedy through a direct appeal of the circuit court’s order finding the subpoenas procedurally defective. The court emphasized that prohibition is an extraordinary remedy and cannot substitute for an appeal.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
JURISDICTION	West Virginia
DECIDED	June 12, 2012
DISPOSITION	writ_denied
PROCEDURAL POSTURE	The West Virginia Attorney General petitioned for an original-jurisdiction writ of prohibition to prevent enforcement of a circuit court order dismissing an action seeking enforcement of administrative investigative subpoenas.
STANDARD OF REVIEW	For a discretionary writ of prohibition based on an alleged excess of legitimate powers rather than an absence of jurisdiction, the court examines five Hoover factors: availability of another adequate remedy, irreparable prejudice, clear legal error, repeated error or persistent disregard of law, and the presence of a new or important legal issue. All five factors need not be satisfied, but clear legal error receives substantial weight.
PRECEDENTIAL VALUE	Published West Virginia Supreme Court of Appeals opinion; precedential.
PARTIES	Darrell V. McGraw, Attorney General for the State of West Virginia v. Charles E. King, Jr., Judge of the Circuit Court of Kanawha County, Fast Auto Loans, Inc., Community Loans of America, Inc., Robert I. Reich

TOPICS

writ of certiorari

appellate procedure

appellate jurisdiction

standard of review

administrative law

PRACTICE AREAS

Appellate procedure

Administrative law

Consumer protection

Civil procedure

Remedies

QUESTIONS PRESENTED

1. Whether the Attorney General could use an original-jurisdiction writ of prohibition to obtain review of the circuit court's ruling that the investigative subpoenas were procedurally defective.
2. Whether the existence of a direct appeal provided an adequate alternative remedy that required denial of the writ.

HOLDINGS

1. A writ of prohibition was unavailable because the Attorney General had an adequate remedy through a direct appeal from the circuit court's order.
2. The Attorney General's five merits questions concerning the subpoenas exceeded the proper scope of review in the original-jurisdiction extraordinary-remedy proceeding.

KEY QUOTATIONS

“The petition for writ of prohibition is not a substitute for an appeal.” (at 371)

“Prohibition lies only to restrain inferior courts from proceedings in causes over which they have no jurisdiction, or, in which, having jurisdiction, they are exceeding their legitimate powers, and may not be used as a substitute for [a petition for appeal] or certiorari.” (at 371)

FACTUAL BACKGROUND

The West Virginia Attorney General investigated complaints concerning collection calls relating to title loans made by Virginia and Georgia corporations to West Virginia residents. He issued administrative subpoenas seeking extensive records concerning those loans and collection practices, but the out-of-state respondents declined to produce the documents. The Attorney General then sought judicial enforcement, and the circuit court ruled that the subpoenas were procedurally defective because proper procedures for issuing and serving subpoenas on out-of-state entities had not been followed.

PROCEDURAL HISTORY

The Attorney General issued investigative subpoenas to out-of-state lenders and their executive seeking records related to loans made to West Virginia residents and allegedly unlawful collection activity. After the respondents declined to produce the documents, the Attorney General sought enforcement in the Circuit Court of Kanawha County. The circuit court ruled that the subpoenas were procedurally defective and denied enforcement. Rather than directly appeal that order, the Attorney General sought a writ of prohibition. The Supreme Court of Appeals denied the writ.

DISPOSITION

writ_denied

CASES CITED

- State ex rel. Hoover v. Berger, 199 W. Va. 12, 483 S.E.2d 12 (1996)
- Crawford v. Taylor, 138 W. Va. 207, 75 S.E.2d 370 (1953)

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