

MIDWEST BUSLINES, INC. et al *v.*  
Lee A. MUNSON, Judge et al

81-213

622 S.W. 2d 187

Supreme Court of Arkansas  
Opinion delivered October 13, 1981

1. **PROHIBITION — PETITION FOR WRIT OF PROHIBITION TREATED AS PETITION FOR WRIT OF CERTIORARI TO CORRECT PROCEEDING ERRONEOUS ON ITS FACE.** — Where petitioners appeared by counsel in the trial court without questioning its jurisdiction and made application for a temporary writ of prohibition, *held*, the petition will be treated as a petition for a writ of certiorari to correct a proceeding that is erroneous on the face of the record and as to which no other adequate remedy appears.
2. **INJUNCTION — ISSUANCE OF TEMPORARY RESTRAINING ORDER WITHOUT HEARING ERRONEOUS.** — The trial judge was in error in issuing a temporary restraining order without setting an expeditious hearing to determine whether the order should be dissolved, since various hearings to be conducted by the

Arkansas Transportation Commission do not satisfy the requirements for a hearing as set out in Rule 65 (b), A. R. Civ. P., Ark. Stat. Ann., Vol. 3A (Repl. 1979).

Temporary writ of prohibition denied; petition treated as one for certiorari.

*Janis Richardson*, Ark. Transportation Commission, for petitioners.

*Don A. Smith*, for respondents.

PER CURIAM. The application for a temporary writ of prohibition is denied, the petitioners having appeared by their counsel in the trial court without questioning its jurisdiction. We treat the petition, however, as a petition for a writ of certiorari to correct a proceeding that is erroneous on the face of the record and as to which no other adequate remedy appears. *Bridges v. Ark. Motor Coaches*, 256 Ark. 1054, 511 S.W. 2d 651 (1974). The trial judge was in error in issuing a temporary restraining order without setting an expeditious hearing to determine whether the temporary restraining order should be dissolved, as required by Civil Procedure Rule 65 (b). Various hearings to be conducted by the Arkansas Transportation Commission do not satisfy the requirements of the Rule just cited. Upon application of any party to the case the trial court is directed to hold a hearing within ten days to determine whether the temporary order should be continued in force or be dissolved.

HAYS, J., not participating.