

Cite as 2018 Ark. 248

SUPREME COURT OF ARKANSAS

No. CV-18-455

HOTELS.COM, L.P.; HOTWIRE, INC.; TRIP NETWORK, INC., D/B/A CHEAPTICKETS.COM; EXPEDIA, INC.; INTERNETWORK PUBLISHING CORP. D/B/A LODGING.COM; LOWESTFARE.COM, INCORPORATED; ORBITS, LLC; PRICELINE.COM, INCORPORATED N/K/A BOOKING HOLDINGS, INC.; PRINCELINE.COM, LLC; TRAVELOCITY.COM, L.P., N/K/A BOOKING HOLDINGS, INC.; PRICELINE.COM, LLC; TRAVELOCITY.COM, L.P., N/K/A TVL, L.P.; TRAVELWEB, LLC; AND SITE59.COM, LLC

PETITIONERS

V.

JEFFERSON COUNTY CIRCUIT COURT AND HONORABLE ROBERT H. WYATT, JR., CIRCUIT JUDGE

RESPONDENTS

Opinion Delivered: August 2, 2018

APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [NO. 35CV-09-946]

HONORABLE ROBERT H. WYATT, JR., JUDGE

DISSENTING OPINION.

JOSEPHINE LINKER HART, Associate Justice

I would grant the petitioners' requested writ of certiorari. A writ of certiorari will issue when there is a lack of jurisdiction, an act in excess of jurisdiction, or the proceedings are erroneous on the face of the record. *Ark. Dep't of Human Servs. v. Collier*, 351 Ark. 506,

517, 95 S.W.3d 772, 777 (2003). In determining whether the writ should issue, this court examines the record to decide whether there has been a “plain, manifest, clear, and gross abuse of discretion” with no adequate remedy. *Id.* Applying these principles to the case at hand, it is plain that the writ should issue. The circuit court is continuing to hold the petitioners in court when the plaintiffs below have already received every ounce of relief they have requested in their pleadings; accordingly, the circuit court is acting in excess of its jurisdiction. Moreover, the plaintiffs below have repeatedly represented that they are not seeking damages in this case, and both the circuit court and this court relied upon those representations at the motion-to-dismiss and class-certification stages. To now allow the plaintiff classes to pursue damages in the exact same case on the exact same pleadings is manifestly unfair to the petitioners. Furthermore, considering the “[t]his Preliminary Order is not final” language used in the circuit court’s order, it is not clear that there is any other adequate remedy available.¹ Accordingly, I would grant the writ of certiorari.

¹ Sensing this potentiality, the petitioners also filed a notice of appeal of the circuit court’s order contemporaneously with the filing of their petition in this court. My vote to grant a writ of certiorari here embodies my apprehension at the timing of these two separate proceedings. In an ideal world, the viability of the petition for a writ of certiorari and the appealability of the circuit court’s order would be addressed in the same instance, as the latter impacts the former. Obviously, that is not what is taking place here. One could envision a potential scenario where this court declines to grant the writ by syllabus entry at this juncture and then later dismisses the petitioners’ appeal from the circuit court’s order because the language contained in the order somehow renders it not appealable. In my view, the better route would be to grant the writ at this juncture, and then dismiss the forthcoming appeal as moot when it is submitted for this court’s consideration, assuming the petitioners had not already voluntarily dismissed the appeal by that point.