

**SUPREME COURT OF ARKANSAS**

No. 09-593

GARY MICHAELIS, INDIVIDUALLY  
AND D/B/A RACER AG SERVICE  
PETITIONER

V.

THE CIRCUIT COURT OF ST.  
FRANCIS COUNTY AND ROBERT  
STEWART  
RESPONDENTS

**Opinion Delivered** December 17, 2009

PETITION FOR WRIT OF  
CERTIORARI

DENIED WITHOUT PREJUDICE.

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**PAUL E. DANIELSON, Associate Justice**

Petitioner Gary Michaelis, individually and d/b/a Racer AG Service, petitions this court for a writ of certiorari to respondents the Circuit Court of St. Francis County and Robert Stewart. Michaelis claims that an order of the circuit court, sitting as an appellate court on a criminal appeal from district court, was void because the circuit court did not have jurisdiction to settle the record of the district court by changing a plea due to a clerical error. We deny the petition for writ of certiorari without prejudice.

The record reflects that on June 1, 2004, respondent Robert Stewart was charged with Terroristic Threatening II in the St. Francis County District Court (CR-04-15707). The charges stemmed from alleged threats of harm to Michaelis made by Stewart during a phone call to the Arkansas State Plant Board. The district court docket sheet reflects that while



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Stewart pled no contest to the charge, he was found guilty and ordered to pay \$250. It appears from the record that Stewart then appealed his conviction in district court to the circuit court (CR-2004-279), as evidenced by an order of the circuit court, entitled “Order to Settle Record,” which stated:

On or about February 28, 2005, the court, ruling from the bench in open court, dismissed the criminal proceedings against defendant based upon its review of the sworn testimony of the complaining witness that the charges were brought against defendant because defendant had initiated a complaint against said witness with the Arkansas State Plant Board. The court ruled in defendant’s favor on his appeal, but it is the court’s understanding that some question has been raised regarding the court’s ruling. In order to clarify and settle the record, the court makes the following FINDINGS AND RULINGS:

1. Defendant pleaded *nolo contendere* [sic] to the misdemeanor charges below in St. Francis County District Court and properly appealed said conviction to this court for his *de novo* appeal. To the extent that any record of the District Court reflects that defendant pleaded guilty, the notation in each such record is a clerical error, given that defendant did not plead guilty to the pending charges.

2. The charges against defendant were dismissed by the order of the court on defendant’s *de novo* appeal, and defendant’s conviction in the St. Francis County District Court, which was based upon the *nolo contendere* [sic] plea, is hereby reversed and vacated.

3. This order is entered to settle and clarify the record, and reflect that which was actually done by the court on or about February 28, 2005, in its ruling from the bench.

4. This order is entered *nunc pro tunc* to February 28, 2005.

The order was signed by the circuit court on May 5, 2006, and was filed on June 15, 2006.

Prior to entry of the circuit court’s order to settle the record, Stewart filed a civil complaint against Michaelis, individually and d/b/a Racer AG Services; Sam Dickens; and John Doe I, on March 1, 2005 (CV-2005-76-2). In that complaint, Stewart alleged that



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Dickens, an employee of the Arkansas State Plant Board, and John Doe I, an unknown employee of the Board, acted in a manner that exceeded the scope of their authority as employees of the Board, committed ultra vires acts, and acted willfully, wantonly, and maliciously toward him. The complaint further asserted that the actions of Michaelis, Dickens, and Doe constituted defamation, an abuse of process, and malicious prosecution. Finally, Stewart's complaint alleged that Michaelis's actions served as the basis for a claim of trespass. Michaelis and Dickens answered the complaint, and Dickens was ultimately granted summary judgment.

On May 14, 2009, Michaelis filed a motion in the civil matter to set aside the order to settle the record entered in Stewart's criminal matter. According to the docket sheet contained in the partial record before this court, Stewart filed a response to the motion to set aside; however, that response was not included in the record, nor is any ruling on the motion evident. Michaelis then filed the instant petition for writ of certiorari with this court on May 27, 2009.

Michaelis argues that the order to settle the record entered in Stewart's criminal matter is void on its face. He supports this argument, stating solely that the order "was entered *nunc pro tunc* to February 28, 2005, signed by Circuit Judge L.T. Simes, and was not approved by Chris Morledge, Deputy Prosecuting Attorney, and was not filed until June 15, 2006." He further asserts that the order is subject to collateral attack because the circuit court lacked jurisdiction to settle the record of the district court. Finally, he states that he has standing to



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bring a collateral attack of the order because his interests are adversely affected by the order. Specifically, the order deprives him of the defense, that Stewart pled guilty, to the malicious-prosecution charge brought against him by Stewart.

Stewart responds that Michaelis lacks standing to bring the instant petition or otherwise interfere with the criminal proceedings against Stewart.<sup>1</sup> He maintains that Michaelis, a private party to a civil action, has no standing to challenge or attack an order of the circuit court in a separate criminal case, in which the State and Stewart are the only parties with standing to seek relief. He avers that the Second Division of the St. Francis Circuit Court has no jurisdiction to take any action regarding the First Division's order to settle the record. Finally, he contends that certiorari is improper in this matter.

There are two requirements that must be satisfied in order for this court to grant a writ of certiorari. *See Jordan v. Circuit Court of Lee Cnty.*, 366 Ark. 326, 235 S.W.3d 487 (2006). The first requirement for a writ of certiorari is that there can be no other adequate remedy but for the writ of certiorari. *See id.* Second, a writ of certiorari lies only where (1) it is apparent on the face of the record that there has been a plain, manifest, clear, and gross abuse of discretion, or (2) there is a lack of jurisdiction, an act in excess of jurisdiction on the face of the record, or the proceedings are erroneous on the face of the record. *See id.* Thus, a writ of certiorari is appropriate when, on the face of the record, it is apparent that no other remedy is available to correct a plain, manifest, and gross abuse of discretion by the circuit

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<sup>1</sup>There was no response to Michaelis's petition by the circuit court.



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court. See *Chiodini v. Lock*, 373 Ark. 88, 281 S.W.3d 728 (2008). This court has specifically stated that “a writ of certiorari is extraordinary relief, and we will grant it only when there is a lack of jurisdiction, an act in excess of jurisdiction on the face of the record, or the proceedings are erroneous on the face of the record.” *Id.* at 93, 281 S.W.3d at 732 (quoting *Arkansas Dep’t of Human Servs. v. Collier*, 351 Ark. 506, 516, 95 S.W.3d 772, 777 (2003)).

Here, Michaelis seeks to have an order set aside on the basis that it is void. It is clear to this court that a writ of certiorari is not the sole adequate remedy available to obtain such relief. Indeed, Michaelis filed a motion to set aside the order with the circuit court that, once ruled upon, could be appealed following the entry of a final order. This court has been resolute that certiorari is not appropriate when some other remedy, such as an appeal, exists. See *Arkansas Dep’t of Human Servs. v. Circuit Court of Sebastian Cnty.*, 363 Ark. 389, 214 S.W.3d 856 (2005). Because the instant petition fails to meet the first of the two requirements for certiorari to issue, we deny the petition without prejudice.

IMBER, J., not participating.

*Daggett, Donovan & Perry, PLLC*, by: *Robert J. Donovan*, for petitioner.

*Lawrence W. Jackson*, for respondent.