

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2005-CA-002038-OA

PAMELA STEELE, ADMINISTRATRIX OF  
THE ESTATE OF BRETT STEELE, DECEASED; ET AL. PETITIONERS

ORIGINAL ACTION  
REGARDING JEFFERSON CIRCUIT COURT  
v. ACTION NO. 03-CI-009633

HON. MARTIN McDONALD, JUDGE,  
JEFFERSON CIRCUIT COURT RESPONDENT

AND

REPUBLIC SERVICES OF KENTUCKY, LLC,  
D/B/A/ INDUSTRIAL DISPOSAL CO.; ET AL. REAL PARTIES IN INTEREST

OPINION AND ORDER DENYING  
PETITION FOR WRIT OF PROHIBITION  
\*\* \*\* \*\* \*\* \*\*

BEFORE: HENRY, KNOPF, AND TAYLOR, JUDGES.

KNOPF, JUDGE. By order entered December 22, 2005, the Court granted the parties' joint motion to delay issuing an Opinion. The Court ordered that this original action be held in abeyance until January 17, 2006, or until the parties notified the Court of the outcome of their efforts at reaching an agreement, whichever would occur sooner.

The period of abeyance expired without the parties taking any further action. Therefore, the Court shall now dispose of this matter.

Petitioner, Pamela Steele, asks this Court to prohibit enforcement of an order granting a motion of the real parties in interest to compel the DNA testing of her minor children. She contends that enforcement of the order would cause the children irreparable harm from which there is no adequate remedy at law by subjecting them to an unlawful invasion of privacy and an illegal seizure of their genetic information for the sake of ascertaining an issue that is collateral to the determination of liability in the action. Petitioner further claims that the trial court's decision undermines the orderly administration of justice by broadening the scope of CR 26 beyond its intended parameters.

The real parties in interest respond that, by contesting her deceased husband's blood alcohol level at the time of the accident, petitioner has put in issue questions of fact which go to the ultimate determination of liability and that the probative value of the DNA testing outweighs any danger of unfair prejudice to the children. They point out that the children are not mere third-parties to the litigation and they advance that the buccal swab procedure that has been ordered is not invasive and does not implicate the children's privacy

rights. In any event, they add, they are willing to enter into an agreed confidentiality order with petitioner that would protect against the disclosure of the children's genetic information outside the context of this litigation.

Initially, the Court determines that petitioner has shown entitlement to a review of the merits of her petition because, assuming that the real parties in interest have no right to the information that they seek, her injury would occur upon its disclosure and redress would be unavailing through appeal or otherwise.<sup>1</sup>

Next, because the children are parties to the pending action, this Court's standard of review is whether the respondent trial court's decision is an abuse of its discretion.<sup>2</sup> Having considered the parties' arguments and the appended record, we conclude that the trial court did not abuse its discretion in ordering the children to submit to DNA testing because we believe that the circumstances of this case call for application of the established principle that "[a] physical examination may be demanded . . . where discovery of the truth

---

<sup>1</sup> See, e.g., Bender v. Eaton, 343 S.W.2d 799, 802 (Ky. 1961).

<sup>2</sup> Belt Electric Line Co. v. Allen, 44 S.W. 89 (Ky. 1898).

will more likely result with, than without, the examination, and the ends of justice be thereby better subserved."<sup>3</sup>

Therefore, this petition for writ of prohibition is hereby DENIED.

ALL CONCUR.

ENTERED: February 10, 2006

    /s/ Wm. L. Knopf      
JUDGE, COURT OF APPEALS

COUNSEL FOR THE PETITIONERS:

Jeffrey L. Freeman  
Tyler S. Thompson  
Louisville, KY

COUNSEL FOR THE REAL PARTIES  
IN INTEREST:

Robert E. Maclin, III  
John N. Billings  
Lexington, KY

---

<sup>3</sup> Id. at 90. We note for the record that there would be no justification for the testing if petitioner were to agree that the blood samples were collected from the decedent.