

**Petition for Writ of Mandamus Conditionally Granted in Part and Denied in Part and
Memorandum Opinion filed January 4, 2010.**



In The

Fourteenth Court of Appeals

NO. 14-09-00985-CV

IN RE DANIEL GAWLIKOWSKI, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS**

MEMORANDUM OPINION

On Friday, November 20, 2009, relator Daniel Gawlikowski filed a petition for writ of mandamus in this Court. *See* Tex. Gov't Code Ann. §22.221 (Vernon 2004); *see also* Tex. R. App. P. 52. In the petition, relator asks this Court to vacate an order by the Honorable Bonnie Hellums, presiding judge of the 247th District Court of Harris County, dated October 22, 2009, entered in trial court cause number 2003-67714, *In the Interest of B.N.G.*

The order at issue imposes monetary sanctions requiring relator and relator's attorney to pay \$45,000 and \$5,000, respectively, in attorney's fees to the real party in interest. "If the imposition of monetary sanctions threatens a party's continuation of the litigation, appeal affords an adequate remedy only if payment of the sanctions is deferred until final judgment is rendered and the party has the opportunity to supersede the

judgment and perfect his appeal.” *Braden v. Downey*, 811 S.W.2d 922, 929 (Tex. 1991). As this court held in *Prime Group, Inc. v. O’Neill*, 848 S.W.2d 376, 379 (Tex. App. — Houston [14th Dist.] 1993, orig. proceeding), if a party does not contend that pre-judgment payment of the sanction would prevent it from continuing the litigation, staying the payment of the sanction is not necessary and the party has an adequate remedy by appeal. *See also Ex parte Conway*, 843 S.W.2d 765, 766-67 (Tex. App. — Houston [14th Dist.] 1992, orig. proceeding) (holding the trial court did not abuse its discretion by making the sanctions payable on a date prior to final judgment where no contention had been made that payment would preclude continuation of the litigation.)

Relator does not claim the monetary sanction threatens his ability to continue the litigation. Moreover, the record does not reflect relator contended to the trial court that payment of the monetary sanction would preclude his access to the court. *See Susman Godfrey, L.L.P. v. Marshall*, 832 S.W.2d 105, 108-09 (Tex. App. — Dallas 1992, orig. proceeding). Accordingly, he has waived his right to make that claim. *Id.* at 109. With respect to the monetary sanction, relator has an adequate remedy at law by appeal and is not entitled to mandamus relief. *See Elec. Data Sys. Corp. v. Tyson*, 862 S.W.2d 728, 736 (Tex. App. — Dallas 1993, orig. proceeding).

The trial court’s order, however, sets a trial date of June 7, 2010, “or the next available trial date following payment of the fees in full as ordered herein.” A sanctions award that impedes the prosecution of the case warrants extraordinary relief. *See In re Dynamic Health, Inc.*, 32 S.W.3d 876, 881 (Tex. App. — Texarkana 2000, orig. proceeding). We therefore conditionally grant a writ of mandamus ordering the trial court to delete the language in its order of October 22, 2009, that conditions setting a trial date on the payment of the monetary sanction.

In all other respects, we deny mandamus relief and lift our prior order staying the order of October 22, 2009. The writ of mandamus will not issue unless the trial court fails to comply with the opinion of this court.

PER CURIAM

Panel consists of Justices Yates, Anderson, and Boyce.

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