Petition for Writ of Mandamus Conditionally Granted, in Part, and Denied, in Part, and Memorandum Opinion filed September 22, 2010.

In The

Fourteenth Court of Appeals

NO. 14-10-00106-CV

IN RE PRESTON CROFT, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS

MEMORANDUM OPINION

In this original proceeding, relator, Preston Croft, asks this Court to compel the Honorable James H. Shoemake, presiding judge of the 434th Judicial District Court of Fort Bend County, to set aside his February 4, 2010 discovery order and two subsequent letter orders compelling relator to produce his tax returns and other financial documents. *See* Tex. Gov't Code Ann. §22.221 (Vernon 2004); *see also* Tex. R. App. P. 52. We conditionally grant the petition, in part, and deny it, in part.

BACKGROUND

Relator and real party in interest, Craig Corbell, are owners in Croft Production Systems, Inc. ("CPS"), which designs, installs, and leases dehydration and dew-point

reducing equipment to the oil and gas industry. Corbell alleges that relator was using CPS for personal use, and was allocating his personal debt to CPS. Corbell further alleges that CPS's debt increased as a result of relator's personal expenditures. Corbell claims that when he addressed these concerns with relator, a dispute arose over the number of shares Corbell owns in CPS.

Corbell, individually, and on behalf of CPS, sued relator for breach of fiduciary duty, breach of contract, fraud, and minority shareholder oppression. The discovery Corbell sought from relator included relator's tax returns and other financial documents. Relator objected that the discovery is overly broad and not relevant. Based on Corbell's allegations of fraud, misapplication of corporate money and misuse of corporate assets, including conversion of corporate assets and money to personal use, the trial court ordered relator to produce tax returns for certain years and certain financial documents. Relator seeks to set aside the trial court's discovery orders in this original proceeding.

STANDARD OF REVIEW

To be entitled to the extraordinary relief a writ of mandamus, the relator must show that the trial court clearly abused its discretion, and he has no adequate remedy by appeal. *In re Laibe Corp.*, 307 S.W.3d 314, 316 (Tex. 2010) (orig. proceeding) (per curiam). A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable as to constitute a clear and prejudicial error of law, or if it clearly fails to analyze or apply the law. *In re Columbia Med. Ctr. of Law Colinas*, 306 S.W.3d 246, 248 (Tex. 2010) (orig. proceeding) (per curiam); *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005) (orig. proceeding) (per curiam). An appeal is not an adequate remedy when the appellate court would not be able to cure the trial court's discovery error. *In re Dana Corp.*, 138 S.W.3d 298, 301 (Tex. 2004) (orig. proceeding) (per curiam); *In re Kuntz*, 124 S.W.3d 179, 181 (Tex. 2003) (orig. proceeding).

Discovery is limited to matters relevant to the case. *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 814 (Tex. 1995) (orig. proceeding) (per curiam). A party's requests must show a reasonable expectation of obtaining information that will aid in the resolution of the dispute. *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam). Therefore, discovery requests must be reasonably tailored to include only matters relevant to the case. *In re Am. Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998) (orig. proceeding) (per curiam). The Texas Supreme Court has repeatedly admonished that discovery may not be used as a fishing expedition. *K Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996) (orig. proceeding) (per curiam); *Dillard Dep't Stores, Inc. v. Hall*, 909 S.W.2d 491, 492 (Tex. 1995) (orig. proceeding) (per curiam); *Texaco, Inc.*, 898 S.W.2d at 815. The scope of discovery is generally a matter of trial court discretion. *In re CSX Corp.*, 124 S.W.3d at 152.

ANALYSIS

Relator asserts the trial court abused its discretion by compelling him to produce his tax returns and certain other financial documents.[1] The Texas Supreme Court has expressed its "'reluctance to allow uncontrolled and unnecessary discovery of federal income tax returns.'" *Hall v. Lawlis*, 907 S.W.2d 493, 494 (Tex. 1995) (orig. proceeding) (per curiam) (quoting *Sears, Roebuck & Co. v. Ramirez*, 824 S.W.2d 558, 559 (Tex. 1992) (orig. proceeding) (per curiam)). With regard to the discovery of tax returns, the Texas Supreme Court has explained:

> Subjecting federal income tax returns of our citizens to discovery is sustainable only because the pursuit of justice between the litigants outweighs protection of their privacy. But sacrifices of the latter should be kept to the minimum, and this requires scrupulous limitation of discovery to

[1] Relator initially argued that Corbell sought the tax returns and financial documents for the purpose of showing "net worth." However, Corbell claimed these documents are relevant to his substantive claims.

> information furthering justice between the parties which, in turn, can only be information of relevancy and materiality to the matters in controversy.

Maresca v. Marks, 362 S.W.2d 299, 301 (Tex. 1962) (orig. proceeding). Therefore, "[i]ncome tax returns are discoverable to the extent they are relevant and material to the issues presented in the lawsuit." *Hall*, 907 S.W.2d at 494.

Generally, in cases concerning the production of financial records, the burden rests on the party seeking to prevent production. *In re Jacobs*, 300 S.W.3d 35, 40 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding [mand. dism'd]). However, unlike the production of other financial records, once an objection is asserted, the party seeking the discovery of income tax returns bears the burden of showing that the returns are relevant and material to the issues in the case. *In re House of Yahweh*, 266 S.W.3d 668, 674 (Tex. App.—Eastland 2008, orig. proceeding); *In re Patel*, 218 S.W.3d 911, 918 (Tex. App.—Corpus Christi 2007, orig. proceeding); *El Centro del Barrio, Inc. v. Barlow*, 894 S.W.2d 775, 779 (Tex. App.—San Antonio 1994, orig. proceeding).

A trial court abuses its discretion by ordering production of tax returns without a showing of relevance in the case. *Hall*, 907 S.W.2d at 494. In addition, federal income tax returns are not subject to discovery if the relevant information sought through the returns can be obtained from another source. *In re House of Yahweh*, at 674; *In re Patel*, 218 S.W.3d at 919; *El Centro del Barrio*, 894 S.W.2d at 780.

Corbell argues that the tax returns are necessary for determining the allocation of assets and liabilities of relator and CPS, and the parties' respective ownership interests in CPS. However, Corbell has not met his burden show that the tax returns are relevant. Corbell has also not demonstrated that he cannot obtain the information that he seeks in the tax returns from another source. Indeed, Corbell admits in his response to relator's petition that he can obtain the information in other financial documents and such

documents are relevant to these issues. Because Corbell has not met his burden of showing that relator's tax returns are relevant and material to the issues in this case, the trial court abused its discretion in ordering the production of the tax returns.

With regard to the production of the other financial documents, relator has the burden of showing that they are not relevant. Relator contends that the requests are overbroad because they seek information beyond time periods and activities relevant to this case. *See In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 180 n.1 (Tex. 1999) (orig. proceeding) (explaining that overbroad requests encompass time periods or activities beyond those at issue in case).

According to relator, Corbell failed to respond timely to relator's request for admission that Corbell first took possession of CPS stock on February 9, 2009. Based on this contention, relator argues that any documents showing the percentage of ownership or relator's conduct with regard to the handling of CPS funds and assets before February 9, 2009 are not relevant. However, Corbell has alleged that relator promised to give him a 5% ownership interest in CPS in exchange for Corbell working for CPS in 2005, and further that the stock certificates should have been issued to him no later than early 2007. We conclude that relator has not met his burden of showing that the remaining financial documents are not relevant to this case.

CONCLUSION

We conclude that the trial court abused its discretion by ordering relator to produce his tax returns and the error cannot be cured on appeal. Accordingly, we conditionally grant the petition for writ of mandamus, in part, and direct the trial court to set aside those portions of its discovery orders that compel relator to produce his tax returns. We deny the remainder of the petition for writ of mandamus. The writ will issue

only if the trial court fails to act in accordance with this opinion. We lift our stay issued on February 8, 2010.

PER CURIAM

Panel consists of Justices Frost, Boyce, and Sullivan (Justice Frost not participating).