

Petition for Writ of Mandamus Denied and Memorandum Opinion filed April 20, 2010



In The

Fourteenth Court of Appeals

NO. 14-10-00352-CV

IN RE ANDREWS TRANSPORT, L.P., Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS**

MEMORANDUM OPINION

On April 19, 2010, relator, Andrews Transport, L.P., 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 compel the Honorable Jaclanal McFarland, presiding judge of the 133rd District Court of Harris County, to set aside the following three oral rulings: (1) the April 13, 2010 ruling denying relator's motion to reconsider the trial court's November 24, 2008 discovery order, requiring relator to produce "a calculation of all monies" paid to relator's expert, Dr. Leonard Hershkowitz, by "[relator's] law firm and/or insurance carrier for the past three years,"

and its March 30, 2009 order, striking the designation of relator's expert witness, Dr. Hershkowitz, as a sanction for violating the November 24, 2008 discovery order; (2) the April 16, 2010 ruling denying relator's renewed motion for reconsideration of the March 30, 2009 sanction order; and (3) the April 16, 2010 ruling granting an oral *Daubert/Robinson* motion¹ made by real party in interest, Patrese Aceves, and striking the designation of relator's expert Dr. Hershkowitz on *Daubert/Robinson* grounds.

Relator argues the trial court's November 24, 2008 discovery order requires production of materials outside the scope of discovery. Relator asserts the trial court's March 30, 2009 sanction order striking relator's only expert witness (Dr. Hershkowitz) was entered without proper notice and a hearing. Relator argues that the sanction is more severe than necessary to justify legitimate purposes and does not have a direct relationship to the offensive conduct. Relator contends the April 16, 2010 *Daubert* order is improper because Aceves made the motion orally and without notice to relator, and the motion is without merit.

Presuming relator has shown a clear abuse of discretion, relator has an adequate remedy by appeal. Therefore, relator has not established its entitlement to the extraordinary relief of a writ of mandamus. Accordingly, we deny relator's' petition for writ of mandamus and related emergency motion to stay the trial.

PER CURIAM

Panel consists of Justices Anderson, Frost, and Seymore.

¹ See *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993); *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995).