

Petition for Writ of Mandamus Denied and Memorandum Opinion filed October 5, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-00951-CV

IN RE WILMA REYNOLDS, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS**

MEMORANDUM OPINION

On October 4, 2010, relator Wilma Reynolds 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 Randall Hufstetler, presiding judge of the 300th District Court of Fort Bend County to vacate his order signed July 7, 2010, granting summary judgment to David Reynolds, the real party in interest. Relator further asks this court to stay a hearing, scheduled for October 6, 2010, on the real party's motions for protection of discovery and to strike pleadings.

Factual and Procedural Background

On November 9, 2009, relator Wilma Reynolds filed a request for modification of the terms of conservatorship and of possession of and access to her children in cause number 48170 in the 300th District Court in Brazoria County. On May 12, 2010, real

party in interest David Reynolds filed a motion for partial no-evidence summary judgment alleging adequate time for discovery had elapsed and Wilma produced no evidence to demonstrate her request for changes in conservatorship or changes in possession and access.

On June 25, 2010, Wilma filed a petition for writ of mandamus in this court, which was docketed No. 14-10-00564-CV. The petition asked this court to set aside orders granting a motion to dismiss and granting a motion for sanctions in a dispute over property division between the parties. In that action, Wilma sought to stay “the trial court’s order requiring Wilma pay attorney’s fees to [David’s employer] on or before July 1, 2010.” On July 1, 2010, this court ordered “the June 18, 2010 sanctions order be stayed in trial court cause number 48170, *In the Interest of L.R. and A.R., Children.*” The court stayed the sanctions order because Wilma had a pending appeal challenging the division of property in the divorce.

On July 7, 2010, the respondent granted David’s motion for no-evidence summary judgment in the modification of conservatorship and possession action. On September 24, 2010, Wilma served discovery requests on David in connection with the modification action. On September 30, 2010, David filed a motion for protection from discovery and a motion to strike Wilma’s sixth amended petition to modify parent-child relationship. The motion to strike is based on the summary judgment granted July 7, 2010. Both motions are set for a hearing October 6, 2010.

Mandamus Review

Mandamus relief is available if the trial court abuses its discretion, either in resolving factual issues or in determining legal principles, when there is no other adequate remedy by law. *See Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex.1992). Generally, the remedy of appeal after judgment is an adequate remedy precluding

mandamus. *Id.* at 840–42. A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law, or if it clearly fails to analyze or apply the law correctly. *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005).

Analysis

In her first issue relator contends the trial court abused its discretion by ruling on the motion for partial summary judgment while the stay was pending. However, the summary judgment was granted in relator’s suit for modification of possession and conservatorship of the children; the stay order was issued in a dispute over property division. Further, this court’s stay order did not stay all proceedings in the trial court. The order specifically stayed only the June 18, 2010, sanctions order. Therefore, the trial court did not violate the stay by ruling on the motion for summary judgment in the modification suit.

In her second issue relator contends the trial court abused its discretion in granting the motion for summary judgment. The partial summary judgment is not reviewable on mandamus. When the summary judgment becomes final, either through severance, or final disposition on the case, it will be appealable. Because relator has an adequate remedy at law, the summary judgment is not reviewable by mandamus. *See In re Dynamic Health*, 32 S.W.3d 876, 881 (Tex. App.—Texarkana 2000, orig. proceeding).

Relator has not established entitlement to the extraordinary relief of a writ of mandamus. Accordingly, we deny relator’s petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Brown, Sullivan, and Christopher.