

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-09-00447-CV

IN RE FREDERICK RAY AKINS AND LCST, LLC

Original Proceeding

MEMORANDUM OPINION

Frederick Ray Akins and LCST, LLC, have filed a petition for writ of mandamus in which they ask this Court to compel the trial court to vacate its order denying the relators' motion to abate and to dismiss the action. In two issues, relators contend the trial court abused its discretion by denying their motion to abate the case and by depriving relators of the opportunity to present evidence before ruling on the motion to abate. Relators argue that a Harris County district court in which related litigation is pending has dominant jurisdiction over the dispute. We deny the petition for writ of mandamus.

Immanuel Home Health Care, Inc. sued Akins and LCST in the 55th District Court of Harris County in 2007, took a default judgment against LCST, and then filed a petition for receivership in the Liberty County District Court. The Liberty County district court appointed a receiver for LCST. A few days after Immanuel filed its petition for receivership in Liberty County, the Harris County district court denied Immanuel Home's no-evidence motion for summary judgment against Akins. Seeking to impose liability on Akins for the

debts of LCST, Immanuel Home subsequently filed a motion for summary judgment in the Liberty County case. Relators then filed a motion to abate the Liberty County proceedings on the grounds that the Harris County court has dominant jurisdiction. The trial court has not abated the case.¹

“An action to have a receiver appointed for a corporation with property in this state shall be brought in the county in which the principal office of the corporation is located.” TEX. CIV. PRAC. & REM. CODE ANN. § 64.071 (Vernon 2008). LCST’s principal place of business is in Liberty County. The record indicates mandatory venue for the receivership action is in Liberty County. *Compare Gonzalez v. Reliant Energy, Inc.*, 159 S.W.3d 615, 622 (Tex. 2005) (“The court in which suit is first filed generally acquires dominant jurisdiction to the exclusion of other courts *if* venue is proper in the county in which suit was first filed.”); *with Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 248 (Tex.1988) (“It is well settled that when suit would be proper in more than one county, the court in which suit is first filed acquires dominant jurisdiction to the exclusion of other courts.”).

Assuming the Harris County district court maintains dominant jurisdiction over some of the claims at issue in the Liberty County suit, the mandamus record filed in this case does not support the issuance of a writ of mandamus. Appellate review usually provides an adequate remedy for incidental rulings. *See Abor v. Black*, 695 S.W.2d 564, 566-67 (Tex.1985). Mandamus relief may be required to correct a trial court’s erroneous refusal to abate an action based on dominant jurisdiction in another court if one of the courts directly interferes with the other by issuing a conflicting order or injunction. *Compare In re SWEPI*,

¹Neither party provided this Court with a copy of a written order signed by the trial court.

L.P., 85 S.W.3d 800, 809 (Tex. 2002), *Curtis v. Gibbs*, 511 S.W.2d 263, 265 (Tex. 1974), and *Cleveland v. Ward*, 116 Tex. 1, 285 S.W. 1063, 1072 (1926), with *Hall v. Lawlis*, 907 S.W.2d 493, 494 (Tex. 1995), and *Abor v. Black*, 695 S.W.2d at 567. The mandamus record filed in this case does not reveal an interference by one of the courts upon the proceedings in the other court. See *Hall*, 907 S.W.2d at 494. We overrule issue one.

In their second issue, relators contend the trial court denied the relators an opportunity to present evidence in support of their motion to abate. This assertion is not supported by the mandamus record. The record shows that the trial court conducted a hearing and no evidence offered by relators in the hearing was excluded by the trial court. We overrule issue two.

The petition for writ of mandamus is denied.

PETITION DENIED.

PER CURIAM

Submitted on October 16, 2009
Opinion Delivered November 12, 2009

Before McKeithen, C.J., Gaultney and Kreger, JJ.