

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00014-CV

IN RE BNSF RAILWAY COMPANY

Original Proceeding

MEMORANDUM OPINION

A mandamus petition filed by BNSF Railway Company asks this Court to order the trial court to vacate its docket control order of September 27, 2010, to reinstate a docket control order agreed to by the parties in September 2009, to enforce the deadlines stated in the agreed order, and to rule on both relator's no-evidence motion for summary judgment and relator's traditional motion for summary judgment based on limitations.

Mandamus will issue only to correct a clear abuse of discretion when that abuse cannot be remedied by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004); *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992). After reviewing the mandamus record and petition, we conclude that the relator has not demonstrated a clear

abuse of discretion by the trial court for which there is no adequate appellate remedy.

Accordingly, we deny the petition for writ of mandamus.

PETITION DENIED.

PER CURIAM

Opinion Delivered February 3, 2011

Before Gaultney, Kreger, and Horton, JJ.