

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00380-CV

IN RE NORALYN DAWSON

Original Proceeding

MEMORANDUM OPINION

Noralyn Dawson petitioned for mandamus relief from an order to appear for a deposition. Dawson, a non-resident defendant, contends the trial court abused its discretion by requiring Dawson to appear for her deposition in the county of suit. *See* Tex. R. Civ. P. 199.2(b)(2)(C). The affidavit Dawson presented to the trial court claims that conducting the deposition in the county of suit will impose undue hardship on Dawson because she is the only person available to care for her child during the week.

The Texas Rules of Civil Procedure generally allow the deposition of a party to a suit to be taken in the county where the suit is pending. *See id.* In this case, Dawson's affidavit does not sufficiently demonstrate that Dawson would suffer undue hardship by being required to attend her deposition in the county where the suit was pending. For

example, the trial court's order required that Dawson choose a date within a period of approximately forty days, and her affidavit fails to explain why she is unavailable for a deposition on a weekend.

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 relator failed to establish an abuse of discretion by the trial court. Accordingly, we deny the petition for writ of mandamus.

PETITION DENIED.

PER CURIAM

Submitted on July 22, 2011
Opinion Delivered August 11, 2011
Before McKeithen, C.J., Kreger and Horton, JJ.