Conditionally Granted and Opinion Filed March 22, 2017

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00192-CV

IN RE VANESSA SWAROVSKI, Relator

Original Proceeding from the County Court at Law No. 1
Dallas County, Texas
Trial Court Cause No. CC-13-07017-A

MEMORANDUM OPINION

Before Justices Francis, Evans, and Whitehill
Opinion by Justice Evans

In this original proceeding, relator complains that the trial court has refused to sign a judgment following a September 2, 2016 default judgment prove-up hearing. We requested responses from the real parties in interest and respondent, which were due by March 7, 2017. No responses have been filed. We conditionally grant relief.

Availability of Mandamus Relief

When a motion is properly filed and pending before a trial court, the act of giving consideration to and ruling upon that motion is a ministerial act, and mandamus may issue to compel the trial judge to act. *Safety–Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex. App.—San Antonio 1997, orig. proceeding). To obtain mandamus relief for the trial court's refusal to rule on a motion, a relator must establish: (1) the motion was properly filed and has been pending for a reasonable time; (2) the relator requested a ruling on the motion; and (3) the trial court refused to rule. *In re Buholtz*, No. 05-16-01312-CV, 2017 WL 462361, at *1 (Tex. App.—

Dallas Jan. 31, 2017, orig. proceeding) (mem. op.); *Crouch v. Shields*, 385 S.W.2d 580, 582 (Tex. App.—Dallas 1964, writ ref'd n.r.e.). It is relator's burden to provide the court with a record sufficient to establish her right to relief. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992); TEX. R. APP. P. 52.3(k), 52.7(a).

Applicable Law

A trial court is required to consider and rule upon a motion within a reasonable time. *Safety–Kleen Corp.*, 945 S.W.2d at 269. No litigant is entitled to a hearing at whatever time he may choose, however. *In re Chavez*, 62 S.W.3d 225, 229 (Tex. App.—Amarillo 2001, orig. proceeding). A trial court has a reasonable time within which to consider a motion and to rule. *In re Craig*, 426 S.W.3d 106, 107 (Tex. App.—Houston [1st Dist.] 2012, orig. proceeding); *In re Sarkissian*, 243 S.W.3d 860, 861 (Tex. App.—Waco 2008, orig. proceeding). Whether a reasonable time for the trial court to act has lapsed is dependent upon the circumstances of each case and no bright line separates a reasonable time period from an unreasonable one. *In re Shapira*, No. 05-16-00184-CV, 2016 WL 1756754, at *1 (Tex. App.—Dallas Apr. 29, 2016, orig. proceeding) (mem. op.). Among the criteria included are the trial court's actual knowledge of the motion, its overt refusal to act, the state of the court's docket, and the existence of other judicial and administrative matters which must be addressed first. *Id.*; *In re First Mercury Ins. Co.*, No. 13-13-00469-CV, 2013 WL 6056665, at *3 (Tex. App.—Corpus Christi Nov. 13, 2013, orig. proceeding) (mem. op.).

Discussion

There is no question the trial court is aware of the motion and relator's request for ruling. The court held an evidentiary hearing for relator to prove up the default judgment. At the end of the hearing the court directed relator's counsel to provide the court with unredacted billing statements for in camera review to determine relator's reasonable and necessary attorney's fees,

which relator provided to the court on September 15, 2016. The trial court also told relator's counsel that it was not necessary to have another hearing because she did not need additional information on the questions of liability or damages, and she would rule on the motion after reviewing the billing statements. Although the trial court no doubt has a heavy docket, we may presume the trial court took its own docket and its other judicial and administrative duties into consideration when it set the motion for hearing and advised relator of its intention to rule without a further hearing. *See In re First Mercury Ins. Co.*, 2013 WL 6056665, at *5.

The underlying case has been on file for more than three years. The defaulting party answered the lawsuit but then failed to respond to discovery, failed to appear for hearings on relator's previously-filed motions for default judgment, and failed to appear for three trial settings. Relator sought judgment against the defaulting party multiple times, but numerous trial court decisions unnecessarily delayed the resolution of the case. Examples include refusing to set relator's motion for summary judgment and initial motion for default judgment for hearing, requiring mediation before hearing substantive motions against non-answering parties, resetting default prove-up hearings despite the defaulting party's failure to appear for trial settings, sua sponte granting a new trial after ruling in relator's favor following the second default prove-up hearing, and cancelling a hearing on relator's second motion for summary judgment to require a second mediation despite defendants' failure to attend the first mediation.

The default judgment prove-up hearing at issue occurred nearly six months ago, on September 2, 2016. Relator then filed a request for entry of final judgment and proposed final judgment nearly four months ago, on November 1, 2016 and November 2, 2016 respectively. The trial court has had more than a reasonable time to rule, and relator has done what is required to obtain a ruling on her request for default judgment and request for entry of final judgment.

Under these circumstances, we conclude mandamus relief is appropriate. *See, e.g.*, *In re First Mercury Ins. Co*., 2013 WL 6056665 (three-month delay unreasonable).

Accordingly, we conditionally grant the writ of mandamus. We order the trial court to make written rulings within fifteen (15) days of the date of this opinion on: (1) relator's request for default judgment heard at the September 2, 2016 hearing, and (2) the November 1, 2016 request for entry of final judgment filed by relator. A writ will issue only if the trial court fails to comply with this opinion and the order of this date.

/David W. Evans/
DAVID EVANS
JUSTICE

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