



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00203-CV

IN RE BYRON CURTIS COOK, Relator

Original Proceeding from the 417th Judicial District Court
Collin County, Texas
Trial Court Cause No. 417-04885-2016

DISSENTING OPINION

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

For the following reasons, I disagree with the majority opinion:

The supreme court in *Schwartz v. Jefferson*, 520 S.W.2d 881 (Tex. 1975) (orig. proceeding), stated that the legislature’s 1973 addition of the words “and in all matters ancillary to such suits” to § 30.003’s predecessor version (TEX. REV. CIV. STAT. ANN. art. 2168a) meant that the legislative continuance provisions “obviously extend[ed] the act to depositions and other ancillary proceedings in pending suits.” *Id.* at 886. Subsequent statutory amendments have not substantively changed those words’ meaning in that statute’s successor.

It logically follows from the preceding paragraph that, if depositions are an ancillary matter within the statute’s meaning, other discovery devices are similarly classified and should be similarly treated. Therefore, because the discovery here concerns a pending suit involving a member of the legislature, the trial court was required to extend the continuance to the written discovery too. *See id.* Moreover, as a party to the suit, relator has an interest in paying attention

to all aspects of his case, including discovery directed at other parties, and should not be forced to sacrifice his personal interest to represent his constituents as he perceives they would want him to do.

Accordingly, I would conditionally grant the requested mandamus writ. *See In re Ford Motor Co.*, 165 S.W.3d 315, 322 (Tex. 2005) (orig. proceeding) (per curiam). Because we don't, I respectfully dissent.

/Bill Whitehill/

BILL WHITEHILL
JUSTICE

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