DENY; and Opinion Filed May 22, 2018.

In The

Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00553-CV

IN RE PETER BEASLEY, Relator

Original Proceeding from the 162nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-05278

MEMORANDUM OPINION

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

Before the Court is relator's May 14, 2018 petition for writ of injunction and petition for writ of mandamus. This is the third original proceeding filed by relator since April 5, 2018. In this original proceeding, relator complains that the trial court has taken no action on his May 8, 2018 motion for disqualification and recusal of Judge Maricela Moore and seeks a writ of mandamus directing Judge Moore to act on the motion. Relator also seeks a writ of injunction enjoining Judge Moore from ruling on the motion to designate relator as a vexatious litigant filed by the real parties in interest, from ordering relator to post security to maintain his appeals in this court, and from ordering relator to post security or to obtain permission to appeal any vexatious litigant order that may be entered in the future. For the following reasons, we deny the relief requested.

Writ Jurisdiction

This Court's writ jurisdiction is governed by section 22.221 of the Texas Government Code. This Court "may issue all writs of mandamus, agreeable to the principles of law regulating those writs, against (1) a judge of a district, statutory county, statutory probate county, or county court in the court of appeals district. . . ." TEX. GOV'T CODE ANN. § 22.221(b)(1) (West Supp. 2017). To be entitled to mandamus relief, a relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding).

This Court's injunctive powers, however, are more limited. "Each court of appeals ... may issue ... all ... writs necessary to enforce the jurisdiction of the court." TEX. GOV'T CODE ANN. § 22.221(a) (West Supp. 2017). A court of appeals "has no original jurisdiction to grant writs of injunction, except to protect its jurisdiction over the subject matter of a pending appeal, or to prevent an unlawful interference with the enforcement of its judgments and decrees." *Ott v. Bell*, 606 S.W.2d 955, 957 (Tex. Civ. App.—Waco 1980, no writ); *see* TEX. R. APP. P. 24.3; *see also Thompson v. Coleman*, No. 01-01-00114-CV, 2002 WL 1340314, at *7 (Tex. App.—Houston [1st Dist.] June 20, 2002, pet. ref'd) (holding that attempts to suspend enforcement of judgment pending appeal are generally within the trial court's authority).

Discussion

Based on the record before us, we conclude relator has not shown he is entitled to the relief requested.

First, relator has not established that the trial court abused its discretion by not taking action on the motion to recuse within the four business days immediately following its filing. Upon notice of the filing of a motion to recuse, a trial judge has only two choices—she must promptly either voluntarily recuse herself or refer the motion to the presiding judge of the administrative

judicial district for action. *In re Presley*, No. 05-00-00793-CV, 2000 WL 688239, at *1 (Tex. App.—Dallas May 23, 2000, orig. proceeding) (citing TEX. R. CIV. P. 18a (c), (d) and *Greenberg, Benson, Fisk and Fielder v. Howell*, 685 S.W.2d 694, 695 (Tex. App.—Dallas 1984, orig. proceeding). "Thus, it is a clear abuse of discretion for the trial judge to not act on a motion for recusal in one of the two required ways." *Id.* But the requirement for prompt action does not equate to a mandate for immediate action. *See Gen. Motors Corp. v. Evins*, 830 S.W.2d 355, 358 (Tex. App.—Corpus Christi 1992, no writ) (a trial judge is permitted to hold a hearing to determine whether to recuse or refer); *see also In re Craig*, 426 S.W.3d 106, 107 (Tex. App.—Houston [1st Dist.] 2012, orig. proceeding) (a trial court has a reasonable time within which to consider a motion and to rule); *In re Sarkissian*, 243 S.W.3d 860, 861 (Tex. App.—Waco 2008, orig. proceeding) (same).

Here, relator filed the motion to recuse on Tuesday, May 8, 2018 and filed this petition on Monday, May 14, 2018. He has provided no evidence showing what action, if any, Judge Moore has taken on the motion since its filing. Further, he has presented no evidence that he has brought the motion to the trial court's attention and requested a ruling. As such, relator has not established that the trial judge has refused to act promptly on the motion to recuse and has not established an abuse of discretion. Accordingly, we deny relator's petition for writ of mandamus.

We also deny relator's request for injunctive relief. Relator asks the Court to enjoin the trial court from (1) ruling on the motion to designate relator as a vexatious litigant, (2) ordering relator to post security to maintain his appeals in this court, and (3) ordering relator to post security or to obtain permission to appeal any vexatious litigant order that may be entered in the future. Should the trial court rule on the motion to designate relator as a vexatious litigant, relator is statutorily permitted to appeal that ruling. TEX. CIV. PRAC. & REM. CODE § 11.101(c) ("A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious

litigant”). Further, a vexatious litigant order would not apply to currently pending appeals. TEX. CIV. PRAC. & REM. CODE § 11.101(a) (generally authorizing court to enter order prohibiting person from filing new litigation pro se without permission from local administrative judge when court finds that person is “vexatious litigant” after notice and hearing). Finally, the trial court maintains jurisdiction to determine issues related to supersedeas, and relator has appellate remedies available to him regarding supersedeas orders. TEX. R. APP. P. 24.3, 24.4; *see Burch v. Johnson*, 445 S.W.2d 631, 632 (Tex. Civ. App.—El Paso 1969, no writ) (“Both injunction and prohibition do not lie where there is an adequate remedy through the ordinary channels of procedure.”). As such, any future actions taken by the trial court as to the vexatious litigant motion or as to supersedeas related to a current appeal do not interfere with this Court’s jurisdiction or with this Court’s enforcement of its judgments or decrees. We find nothing in this record indicating that an injunction is necessary here.

To the extent relator’s requests can be construed as seeking a writ of prohibition, we deny that relief as well. A writ of prohibition is used to protect the subject matter of an appeal or to prohibit an unlawful interference with enforcement of an appellate court’s judgment. *Holloway v. Fifth Court of Appeals*, 767 S.W.2d 680, 683 (Tex. 1989) (orig. proceeding). The writ is designed to operate like an injunction issued by a superior court to control, limit, or prevent action in a court of inferior jurisdiction. *Id.* at 682–83. A writ of prohibition has three functions: (1) preventing interference with higher courts in deciding a pending appeal; (2) preventing an inferior court from entertaining suits that will re-litigate controversies already settled by the issuing court; and (3) prohibiting a trial court’s action when it affirmatively appears the court lacks jurisdiction. *Humble Expl. Co., Inc. v. Walker*, 641 S.W.2d 941, 943 (Tex. App.—Dallas 1982, orig. proceeding).

As discussed above, the trial court’s future actions regarding the vexatious litigant motion or supersedeas issues will not interfere with this Court’s jurisdiction over a pending appeal.

Moreover, no settled controversy appears in the record, and there is no evidence that the actions relator seeks to prohibit are outside of the trial court's jurisdiction. Relator has, therefore, not established a right to a writ of prohibition.

Accordingly, we deny relator's petition for writ of injunction and deny relator's petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

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