

CONDITIONALLY GRANT and Opinion Filed December 21, 2018



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00975-CV

IN RE THE BIG 12 CONFERENCE, INC., Relator

Original Proceeding from the County Court at Law No. 1
Dallas County, Texas
Trial Court Cause No. CC-18-00585-A

MEMORANDUM OPINION

Before Justices Bridges, Brown, and Boatright
Opinion by Justice Bridges

This original proceeding involves a question of dominant jurisdiction in which two parallel proceedings are pending in two courts of concurrent jurisdiction. We are asked to decide whether the trial court abused its discretion by denying relator’s plea in abatement. Texas Christian University (TCU), its Board of Trustees, and various members of the athletic department filed a separate original petition involving the same underlying facts as the present original petition. *See In re Tex. Christian Univ.*, No. 05-18-00967-CV (Tex. App.—Dallas, Dec. 21, 2018, orig. proceeding) (mem. op.). For the reasons we conditionally granted TCU’s original petition, we likewise conclude the first-filed rule applies here without exception and conditionally grant relator’s petition.

Further, to the extent Kolby Listenbee, the real party in interest, argues relator does not have standing, his argument is misplaced. Listenbee argues relator “does not have standing to complain that the trial court did not abate the underlying case in favor of another suit in another

county to which relator is not a party.” Listenbee’s argument conflates the issue of standing with relator’s procedural right to file a plea in abatement challenging dominant jurisdiction. “In Texas, the standing doctrine requires a concrete injury to the *plaintiff* and a real controversy between the parties that will be resolved by the court.” *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 154 (Tex. 2012) (emphasis added). Relator is not a plaintiff in the underlying suit. Moreover, Listenbee’s argument runs afoul of the well-settled principle that for two suits to be inherently related, such that the first-filed rule applies, “it is not required that the exact issues and all the parties be included in the first action before the second is filed.” *Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 248 (Tex. 1988). It is undisputed relator is not a party to the first-filed case in Tarrant County; however, that does not foreclose the Tarrant County lawsuit and the Dallas County lawsuit, to which relator is a party, from being interrelated. Moreover, the proper procedural vehicle for the relator to bring to the trial court’s attention the first-filed case in Tarrant County is through a plea in abatement.

We conditionally grant relator’s petition and direct the trial court to issue a written order vacating its July 23, 2018 order denying relator’s plea in abatement and enter an order granting the plea in abatement. A writ will issue only if the trial court fails to comply.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

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