

Opinion issued July 29, 2010



In The
Court of Appeals
For The
First District of Texas

NO. 01-10-00144-CV

MARK A. METZGER, Appellant

V.

**LOREN JACKSON, DISTRICT CLERK OF HARRIS COUNTY, TEXAS,
Appellee**

**On Appeal from the 270th District Court
Harris County, Texas
Trial Court Cause No. 2009-73276**

MEMORANDUM OPINION

Appellant, Mark A. Metzger, challenges the trial court’s denial of his petition for a writ of mandamus, in which he sought an order to compel appellee, Harris County District Clerk Loren Jackson (the “Clerk”), to release to him cash, an annuity, and an account (the “funds”) that he had originally deposited with the Clerk to supersede a judgment entered against him in favor of his ex-wife, Patricia Westbo, pending his appeal.¹ In two issues, Metzger contends that the trial court erred in denying his petition for a writ of mandamus and denying his motion for new trial.

We affirm.

Background

In a related opinion,² which we issue on the same day as this opinion, we provide an extensive and detailed recitation of the history of litigation between Metzger and Patricia Westbo.

After the 247th District Court of Harris County entered a divorce decree

¹ Appellant deposited cash, an annuity, and an account with the registry of the 247th District Court, the Hon. Bonnie Crane Hellums, presiding, in lieu of a surety bond, pending appeal. *See In re Marriage of Mark A. Metzger and Patricia F. Metzger*, No. 2002-21703 (247th Dist. Ct., Harris County, Tex. June 18, 2004), *modified and aff’d*, *Metzger v. Metzger*, No. 01-04-00893-CV, 2007 WL 1633445 (Tex. App.—Houston [1st Dist.] June 7, 2007, pet. denied) (mem. op.).

² *See Westbo v. Metzger*, No. 01-09-00952-CV (Tex. App.—Houston [1st Dist.] July 29, 2010, no pet. h.) (mem. op.).

dissolving the marriage of Metzger and Westbo, Westbo filed a motion to clarify the division of property. The parties executed a Mediated Settlement Agreement (“MSA”), and the 247th District Court entered a clarification order on the MSA. However, Metzger appealed the clarification order, and, pending his appeal, deposited the funds with the Clerk in lieu of a surety bond. We ultimately affirmed, as modified, the clarification order.³

During the pendency of the appeal and after we issued an opinion affirming the clarification order as modified, Metzger filed a series of lawsuits against Westbo and the Clerk in both Tyler County District Courts and Harris County District Courts. Metzger essentially sought declarations that he is entitled to recover the funds and orders compelling the Clerk to release the funds. In one of those separate proceedings, the 247th District Court, on October 2, 2009, granted Metzger summary judgment. In its order, the 247th District Court stated that Westbo had “released any and every claim that she had,” and it enjoined her from making any claim to the funds and taking any steps from interfering with Metzger’s obtaining the funds. In its final judgment, the court also ordered the Clerk to immediately release the funds to Metzger, but, in a handwritten notation, stated, “Hold per request of Judge Hellums [the trial court judge] . . . to 10-8-09.”

³ *Metzger v. Metzger*, No. 01-04-00893-CV, 2007 WL 1633445 (Tex. App.—Houston [1st Dist.] June 7, 2007, pet. denied) (mem. op.).

The handwritten notation, as well as the documents, evidence, and docket sheet in the record, indicate that, after entry of the final judgment, the court elected to “hold” or stay its ruling. Metzger then filed a series of motions to recuse the judge of the 247th District Court,⁴ complaining that she had tampered with governmental records by “holding” the final judgment. These motions to recuse prevented the judge from further ruling in the case. Westbo appealed the final judgment. Today, we issue a separate opinion, in which we hold that Metzger failed to establish as a matter of law his entitlement to the funds, and we reverse the final judgment and remand for further proceedings.

In light of the maze of litigation filed by Metzger and the status of the final judgment, the Clerk refused to release the funds. Metzger, believing that he was still entitled to the funds, filed a new lawsuit against the Clerk in the 270th Harris County District Court. In this new cause, Metzger filed an “original petition for writ of mandamus,” seeking an order against the Clerk to “release the funds in the registry without further delay.” The Clerk filed an answer as well as a plea to the jurisdiction.

When appellant learned that the funds would not be immediately available, he filed his motion to recuse the judge for “interfering” with the “ministerial duty” of the Clerk in the release of the funds and for “tampering with a governmental record[.]” Appellant’s motion to recuse was denied. He subsequently filed a second motion to recuse.

The trial court denied Metzger's petition for writ of mandamus and subsequently denied Metzger's new trial motion.

Denial of Writ of Mandamus

In two issues, Metzger argues that the trial court abused its discretion in denying the petition for a writ of mandamus and his motion for new trial because the Clerk had a nondiscretionary duty to release the funds. Metzger asserts that the Harris County District Clerk "only filed an unsworn general denial" and, thus, "the allegations" in Metzger's petition "should have been taken as true and the mandamus should have been granted by the trial court."

A district court has jurisdiction to issue a writ of mandamus in original proceedings against a county official if the order falls within its jurisdiction and the law does not reserve original proceedings to another court. TEX. CONST. art. V, § 8; TEX. GOV'T CODE ANN. § 24.007 (Vernon 2004). Because the writ of mandamus is an extraordinary remedy, it will issue only to correct a clear abuse of discretion or the violation of a legal duty when there is no other adequate remedy at law. *In re Ford Motor Co.*, 165 S.W.3d 315, 317 (Tex. 2005) (citing *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004)); *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992); *In re Taylor*, 113 S.W.3d 385, 389 (Tex. App.—Houston [1st Dist.] 2003, no pet.). In reviewing whether the trial court clearly abused its discretion, we consider whether the trial court's ruling was

arbitrary, unreasonable, or reached without reference to any guiding rules or principles. *In re Taylor*, 113 S.W.3d at 389.

This Court has previously explained that “money cannot be paid out of the registry of a court except on written evidence of the order of the judge of the court in which the funds have been deposited, authorizing the disbursement of the funds.” *Eikenburg v. Webb*, 880 S.W.2d 781, 782 (Tex. App.—Houston [1st Dist.] 1993, orig. proceeding) (citing TEX. LOC. GOV’T CODE ANN. § 117.121 (Vernon 2008)). In *Eikenburg*, a party acting as a receiver in a case in the 309th District Court of Harris County received funds deposited into the registry of the 312th District Court of Harris County. *Id.* We held,

Because the judge of the 312th District Court first ordered the funds to be deposited with his court, only that court has authority to disburse these funds. Therefore, we hold that the 312th District Court has jurisdiction over the funds on deposit in its court and no other court may interfere with the funds until disbursed by the 312th District Court.

Id. (citation omitted).

Here, Metzger sought a writ of mandamus in the 270th District Court of Harris County to compel the Clerk to disburse funds that Metzger had deposited into the registry of the court of the 247th District Court of Harris County. Thus, the 270th District Court lacked jurisdiction to order disbursement of these funds. Accordingly, we hold that the trial court did not abuse its discretion in denying

Metzger's petition for writ of mandamus and, subsequently, his new trial motion, in which he solely complained about the trial court's denial of the petition for the writ.

We overrule Metzger's two issues.

Conclusion

We affirm the order of the trial court.

Terry Jennings
Justice

Panel consists of Justices Jennings, Alcala, and Massengale.