

Opinion issued December 22, 2011.



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-11-00891-CV

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**IN RE BOGLIA, L.L.C. D/B/A BEST WESTERN BEACHFRONT INN,  
Relator**

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**Original Proceeding on Petition for Writ of Mandamus**

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**MEMORANDUM OPINION**

In this original proceeding, relator Boglia, L.L.C. seeks a writ of mandamus directing respondent, the Honorable John Grady, judge of the County Court at Law No. 1 of Galveston County, to vacate his September 30, 2011 order reinstating the case against Boglia on the ground that the reinstatement order was entered after the

trial court's plenary power expired.<sup>1</sup> This court requested a response but none has been filed. We conditionally grant relief.

### **Background**

Real party in interest Terri Bolton sued Boglia and James Marx alleging that the defendants had invaded her privacy and caused destruction of her personal property. On July 7, 2011, the trial court dismissed the case for want of prosecution. On August 8, 2011, Bolton filed an unverified motion to reinstate the case. The trial court signed an order reinstating the case on September 30, 2011.

### **Discussion**

A trial court's plenary power extends thirty days after a final order of dismissal, absent a timely filed verified motion to reinstate or other post-judgment motion that extends plenary power. TEX. R. CIV. P. 165a(3), (4); *In re Strickland*, No. 01-01-00972-CV, 2002 WL 58482, at \*1 (Tex. App.—Houston [1st Dist.] Jan. 17, 2002, orig. proceeding) (not designated for publication). An unverified motion does not extend plenary power. *McConnell v. May*, 800 S.W.2d 194, 194 (Tex. 1990) (orig. proceeding) (per curiam); *Douglas v. Douglas*, No. 01-06-00925-CV, 2008 WL 5102270, at \*2 (Tex. App.—Houston [1st Dist.] Dec. 4, 2008, pet. denied). A reinstatement order rendered after the expiration of the trial court's

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<sup>1</sup> The underlying case is *Terri Bolton v. Best Western Beachfront Inn and James Marx*, No. CV-0062484, in the County Court at Law No. 1, Galveston County, Texas.

plenary power is void. *In re Strickland*, 2002 WL 58482, at \*1. Mandamus is a proper vehicle to remedy a void reinstatement order. *Id.* (citing *McConnell*, 800 S.W.2d at 194).

Here, the trial court dismissed the case for want of prosecution on July 7, 2011. Bolton did not file a verified motion to reinstate or other post-judgment motion to extend the trial court's plenary power. Thus, the trial court's plenary power extended thirty days after the July 7 dismissal. The trial court did not sign the order reinstating the case until September 30, 2011, well after plenary power expired. We conclude the trial court lacked jurisdiction to enter the order of reinstatement.

### **Conclusion**

We conditionally grant mandamus relief, and direct the trial court to vacate its September 30, 2011 order of reinstatement. A writ will issue only if the trial court does not comply. We overrule all pending motions as moot.

Rebeca Huddle  
Justice

Panel consists of Chief Justice Radack and Justices Bland and Huddle.