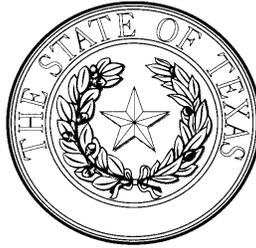


Opinion issued October 12, 2021



In The
Court of Appeals
For The
First District of Texas

NO. 01-20-00391-CV

**IN RE WOODY K. LESIKAR, INDIVIDUALLY, AND AS TRUSTEE OF
THE WOODY K. LESIKAR SPECIAL TRUST, Relator**

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Woody K. Lesikar, individually, and as Trustee of the Woody K. Lesikar Special Trust (“Woody”), filed a petition for writ of mandamus challenging the trial court’s May 21, 2020 Amended Order requiring Woody, and his attorneys, to deposit \$500,000 in the registry of the trial court pending trial of the underlying

litigation (the “Amended Order”).¹ Woody’s mandamus petition requests that we direct the trial court to vacate the Amended Order.²

We deny the petition for writ of mandamus in part and dismiss in part.

Background

The underlying lawsuit involves a dispute between Woody and real parties in interest, Carolyn Lesikar Moon, individually and as Trustee of the Carolyn Lesikar Moon Special Trust and James William Spencer, Independent Executor of the Estate of Carolyn Lesikar Moon, Deceased (collectively, “Moon”).³ Woody and Moon, who were siblings, had been engaged in several legal disputes spanning

¹ The underlying case is *Woody K. Lesikar, Individually, and as Trustee of The Woody K. Lesikar Special Trust v. Woodrow V. Lesikar Family Trust by and through its Beneficiary, Carolyn Ann Lesikar Moon Special Trust, and its Trustee, Woody K. Lesikar Special Trust and Carolyn Ann Lesikar Moon, Individually*, Cause No. 2008-65920-A, pending in the 334th District Court of Harris County, Texas, the Honorable Dawn Rogers presiding.

² The Amended Order was signed by the Honorable Steven Kirkland. On January 1, 2021, Judge Kirkland ceased to hold the office of judge of the 334th District Court of Harris County, Texas, and was succeeded by the Honorable Dawn Rogers. Accordingly, on January 14, 2021, we abated this original proceeding and remanded to the trial court to allow Judge Rogers an opportunity to reconsider the ruling made the basis of Woody’s petition. *See* TEX. R. APP. P. 7.2(b). On February 12, 2021, the trial court held a hearing on Woody’s motion for reconsideration of the Amended Order. On February 18, 2021, Woody filed a Motion to Reinstate, advising the Court that at the February 12, 2021 hearing, “Judge Rogers declined to vacate Judge Kirkland’s May 21, 2020 Amended Order and denied Woody’s Motion for Reconsideration from the bench.” Accordingly, Woody requested that we reinstate the appeal on the Court’s active docket.

³ Moon passed away after the underlying litigation was initiated in 2008. However, her interests are being represented in the underlying litigation by James William Spencer, the independent executor of her estate.

approximately twenty years regarding the distribution of assets after the death of their father, Woodrow V. Lesikar.

Prior to his death, Woodrow V. Lesikar created the Woodrow V. Lesikar Family Trust (the “Family Trust”). The two primary beneficiaries of the Family Trust were designated as the Woody K. Lesikar Special Trust (the “Woody Trust”) and the Carolyn Ann Lesikar Moon Special Trust (the “Moon Trust”). Woody was named a co-trustee of the Family Trust, along with Woodrow V. Lesikar, and the trustee of the Woody Trust. The terms of the Family Trust required that, upon Woodrow V. Lesikar’s death, the assets in the Family Trust be divided equally between the Woody Trust and the Moon Trust, after all other specifically identified bequests were made.

Upon Woodrow V. Lesikar’s death in 2001, Woody was named as the executor of his father’s estate and was responsible for the disposition and distribution of assets in the Family Trust. The distribution of those assets resulted in several legal disputes in various jurisdictions, including the underlying litigation pending in the 334th District Court of Harris County.

Both this Court and the Fourteenth Court of Appeals have considered multiple appeals in connection with the numerous lawsuits Woody and Moon have engaged in regarding the distribution of assets from their father’s estate. Much of the history and background of these disputes is not relevant to the issues presented in Woody’s

mandamus petition currently pending before the Court. However, below is a brief summary of the background relevant to the issues presented in Woody's mandamus petition.⁴

Brazoria County Litigation

In 2003, Moon filed suit against Woody alleging that, in his capacity as trustee of the Family Trust, he improperly disposed of certain assets in the Family Trust for his own benefit, and further, that he refused to distribute the assets in accordance with the terms of the Family Trust. In her suit, Moon requested that the Brazoria County trial court require Woody to comply with the Family Trust obligations. At the conclusion of the litigation, the trial court entered a judgment requiring that Woody fund the Moon Trust as required by the terms of the Family Trust. The trial court's judgment specified assets and amounts that were to be distributed to the Moon Trust, and further awarded Moon attorney's fees.

Woody appealed the judgment, which was largely affirmed. *See Lesikar v. Moon*, 237 S.W.3d 361 (Tex. App.—Houston [14th Dist.] 2007, pet. denied).

⁴ For additional reference, this Court provided a thorough discussion of the background of Woody and Moon's disputes in a 2014 opinion. *See Lesikar v. Moon*, No. 01-12-00406-CV, 2014 WL 4374117, at *1–5 (Tex. App.—Houston [1st Dist.] Sept. 4, 2014, pet. denied) (mem. op.).

The Legal Malpractice Litigation

In 2006, Clay Moore, one of Woody's attorneys in the Brazoria County litigation, filed suit against Woody, the Family Trust, and the Woody Trust. In this suit, filed in Harris County, Moore sought recovery of purportedly unpaid legal fees incurred in the Brazoria County litigation. In response, Woody, individually and as trustee of both the Family Trust and the Woody Trust, filed counterclaims against Moore for legal malpractice. Woody also asserted cross-claims against Edwin Denman and W. Edwin Denman PLLC (collectively, "Denman"), who also represented Woody in the Brazoria County litigation, for legal malpractice (the "Legal Malpractice Litigation").

In connection with the Legal Malpractice Litigation, Woody alleged that Moore and Denman engaged in wrongful conduct that resulted in Moon receiving assets out of the Family Trust that she was not entitled to, that "Woody incurred substantial costs and loss of claims and properties that would have been avoided," and that "Woody's rights to be reimbursed for monies advanced by him for the benefit of the Trusts were not properly preserved and were lost." Woody sought damages "to make him whole."

On or around January 9, 2020, Woody settled the Legal Malpractice Litigation with respect to claims against Denman, agreeing to dismiss those claims in exchange for payment of \$500,000. The settlement was funded later in January 2020, after

which Woody disbursed the majority of those funds, including approximately \$400,000, to himself to “partially repay him for funds advanced by Woody for costs incurred” in connection with previous litigation initiated by, or against, the Family Trust.

Notably, although the Legal Malpractice Litigation was pending for more than a decade, Moon did not attempt to intervene in that suit. According to Moon, however, she did not become aware of Woody’s settlement with Denman until February 2020, when she filed a motion in the underlying litigation, discussed below, requesting the trial court to require the settlement funds be placed in the registry of the court.

The Underlying Litigation

Woody initiated the underlying litigation in 2008, filing a declaratory judgment action, seeking declarations from the trial court regarding his rights to reimbursement of approximately \$600,000 which he alleged he “loaned or advanced for the benefit of the Family Trust and the Woody . . . Trust for the purposes of prosecuting the 2003 [Brazoria County litigation], the [Legal] Malpractice [Litigation], and related litigation.” Moon filed counterclaims in the underlying litigation challenging Woody’s rights to reimbursement and alleging that Woody, as the trustee of the Family Trust, “placed fraudulent liens on property” which had been previously conveyed by the Family Trust as a result of the judgment from the 2003

Brazoria County litigation or were subject to Moon's claims arising out of the 2003 Brazoria County litigation.

The trial court entered a partial summary judgment, ruling that Woody had lost the right to seek reimbursement of certain amounts advanced for fees and costs incurred in the 2003 Brazoria County litigation. Based on this ruling of the trial court, Woody amended his petition to limit his requests for reimbursement to only those amounts he advanced, purportedly for the benefit of the Family Trust or the Woody Trust, in the underlying litigation and the Legal Malpractice Litigation. The remaining claims are currently pending before the trial court.

The February 25, 2020 Order

As referenced above, on February 19, 2020, after learning of Woody's settlement of the Legal Malpractice Litigation against Denman, Moon filed an "Emergency Motion for an Order Requiring the Deposit of Funds Into the Registry." In the motion, Moon requested that the settlement funds Woody received in connection with this settlement be placed in the trial court's registry. Woody opposed Moon's motion, and in response advised the trial court that "a vast majority of the \$500,000 in funds at issue were disbursed pursuant to pre-existing obligations and long before Moon asserted any right to them."

On February 25, 2020, the trial court entered an order granting Moon's motion. However, instead of ordering the funds be deposited in the trial court's

registry, as was requested by Moon, the trial court ordered that the funds be deposited or held in an IOLTA account of one of Woody's attorneys, and that the funds remain in such IOLTA account until further order of the trial court. Woody filed a motion for reconsideration and motion to stay enforcement of the February 25, 2020 order pending resolution of the motion for reconsideration. The trial court denied both of Woody's motions.

After Woody's motion for reconsideration and motion for stay were denied by the trial court, Woody filed a notice of appeal with this Court, challenging the trial court's February 25, 2020 order.⁵

The May 21, 2020 Amended Order

On March 23, 2020, Moon filed a motion requesting that the trial court modify its February 25, 2020 order. Specifically, Moon requested that the order be amended to grant the relief originally requested: that the settlement funds be placed in the registry of the court. On May 21, 2020, the trial court held a hearing on Moon's motion to amend. During the hearing, the trial court addressed the February 25, 2020 order, stating:

[M]y intention was to exercise control, custodial, whatever over that money to prevent it from further dissipating. I did not intend to reach

⁵ See *Lesikar v. Woodrow V. Lesikar Family Trust, by and through its Beneficiary, Carolyn Ann Lesikar Moon Special Trust*, No. 01-20-00286-CV, 2020 WL 3579560, at *1–3 (Tex. App.—Houston [1st Dist.] July 2, 2020, no pet.) (mem. op.) (dismissed for lack of jurisdiction).

out and grab money and bring it back in. I did not intend to undo the payments to the attorneys, but I intended for it to stop moving

To give effect to that intention, on May 21, 2020, the trial court entered the Amended Order, stating:

Woody K. Lesikar and/or his attorneys, Paul S. Francis of Baker Hostetler, LLP and/or Andrew M. Williams of Andrew M. Williams & Associates, are hereby ORDERED to deposit \$500,000, representing the gross amount of all funds received from or in connection with any settlement in Cause No. 2006-25633; *H. Clay Moore vs. Woody K. Lesikar, et al. vs. W. Edwin Denman, P.C. and W. Edwin Denman, Third-Party Counter-Defendants*; [i]n the 189th District Court of Harris County, Texas . . . , in the registry of this Court, on or before 5:00 p.m. on the third day following the date of this Order.

That same day, Woody filed a motion for reconsideration and emergency request for oral hearing. The trial court did not consider either of Woody's motions. The following day, on May 22, 2020, Woody filed an "Emergency Motion for Stay" of the Amended Order with this Court in then pending appellate cause number 01-20-00286-CV.⁶ On May 22, 2020, this Court issued an order temporarily staying enforcement of the Amended Order and requested Moon file a response to Woody's emergency motion.

On May 28, 2020, Moon filed a response to Woody's emergency motion, and on May 29, 2020, we issued an order withdrawing the May 22, 2020 order staying enforcement of the Amended Order.

⁶ See generally *id.*

Also on May 28, 2020, Moon filed a motion to dismiss then pending appellate cause number 01-20-00286-CV for lack of jurisdiction.⁷ In the motion to dismiss, Moon asserted that the Court lacked jurisdiction for two reasons: (1) the February 25, 2020 order was a non-appealable interlocutory order and (2) any appeal of the February 25, 2020 order was rendered moot when the trial court entered the Amended Order. On July 2, 2020, we granted Moon's motion and dismissed the appeal for lack of jurisdiction.⁸

Woody's Mandamus Petition

On June 1, 2020, Woody filed the petition for writ of mandamus, challenging the Amended Order. In his mandamus petition, Woody asserts that the "trial court abused its discretion by entering an order requiring Woody and his attorneys to deposit \$500,000, representing settlement funds from a separate legal proceeding, into the court's registry." Woody's mandamus petition identifies several sub-issues, including arguments that the trial court abused its discretion by:

- (1) ordering Woody to deposit funds in the court's registry that Woody does not have in his possession;
- (2) entering the Amended Order without evidence that the funds were at risk of loss;
- (3) requiring Woody's attorneys to deposit funds in the trial court's registry as well;

⁷ See *id.* at *1.

⁸ See *id.* at *1–3.

- (4) requiring Woody to deposit settlement funds from a separate legal proceeding which Moon failed to establish that she had any “legal right . . . and thus the funds [were] not in dispute”; and
- (5) entering the Amended Order that “runs afoul of long-recognized public policy interests” of the State of Texas.

Standard of Review

Mandamus is an extraordinary remedy that is only available in limited circumstances. *See Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992). To be entitled to mandamus relief, a relator generally must show both that the trial court abused its discretion and that there is no adequate remedy by appeal. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004). To establish an abuse of discretion, a relator must show “a clear failure by the trial court to analyze or apply the law correctly.” *See Walker*, 827 S.W.2d at 840.

Review by mandamus is the appropriate remedy where a trial court has abused its discretion in requiring deposit of funds in the registry of the trial court. *See N. Cypress Med. Ctr. Op. Co. v. St. Laurent*, 296 S.W.3d 171, 178–79 (Tex. App.—Houston [14th Dist.] 2009, no pet.).

Analysis

A trial court has the inherent authority to order a party to place disputed funds in the registry of the court if there exists evidence that those funds are in danger of being “lost or depleted.” *See Castilleja v. Camero*, 414 S.W.2d 431, 433 (Tex. 1967). This inherent authority protects the status quo of the disputed funds until

ownership can be determined. *Id.*; *see also N. Cypress Med. Ctr.*, 296 S.W.3d at 178. The party seeking to have the funds placed in the registry bears the burden of establishing both that the funds are disputed and that they are in danger of being lost or depleted. *See Zhao v. XO Energy LLC*, 493 S.W.3d 725, 736 (Tex. App.—Houston [1st Dist.] 2016, no pet.).

The Amended Order requires that \$500,000, representing the total amount Woody received in settlement of the Legal Malpractice Litigation against Denman, be deposited in the registry of the court. Notably, the Amended Order requires the full amount to be deposited by either Woody, or his attorneys, “Paul S. Francis of Baker Hostetler, LLP, and/or Andrew M. Williams of Andrew M. Williams & Associates.” Woody asserts that the “trial court abused its discretion by entering an order requiring Woody and his attorneys to deposit \$500,000, representing settlement funds from a separate legal proceeding, into the court’s registry.”

As outlined above, Woody identifies five sub-issues in support of his argument that the trial court abused its discretion. In four of the identified sub-issues—numbers 1, 2, 4, and 5—Woody asserts that the trial court abused its discretion by requiring *him* to deposit \$500,000 in the registry of the court. To the extent the Amended Order requires Woody to deposit \$500,000, representing the settlement funds from the Legal Malpractice Litigation, in the registry of the trial

court, we conclude that Woody failed to establish that the trial court abused its discretion and deny that portion of Woody's mandamus petition.

In sub-issue number 3, however, Woody asserts that the trial court abused its discretion by requiring "Woody's attorneys to place \$500,000 in the registry of the [c]ourt." The Amended Order specifically requires Woody's "attorneys, Paul S. Francis of Baker Hostetler, LLP, and/or Andrew M. Williams of Andrew M. Williams & Associates . . . to deposit \$500,000" in the registry of the court. We conclude that this Court lacks jurisdiction to consider Woody's challenge to this portion of the Amended Order.

Among others, the attorneys referenced in the Amended Order, Paul S. Francis of Baker Hostetler, LLP and Andrew M. Williams of Andrew M. Williams & Associates, are identified as counsel of record for Woody in the mandamus petition filed with this Court. The mandamus petition identifies Woody K. Lesikar as the relator for this mandamus petition, both in his individual capacity and in his capacity as trustee of the Woody Trust. Neither Francis nor Williams, or their respective law firms, are identified as a party to this original proceeding, nor have they filed a separate challenge to the Amended Order's requirement that they deposit funds in the trial court's registry.

The mandamus record presented to this Court is silent regarding Woody's standing to challenge the Amended Order to the extent it requires action on the part

of his attorneys. However, we believe the Amended Order's requirement that Woody's attorneys deposit funds in the court's registry to be analogous to a situation where a trial court imposes sanctions against both a party and the party's attorney. In that situation, Texas law is clear that a client lacks standing to challenge sanctions imposed against the party's attorney, and the attorney must either expressly join the party's challenge or file his own challenge. See *Boyaki v. John M. O'Quinn & Assocs., PLLC*, No. 01-12-00984-CV, 2014 WL 4855021, at *19 (Tex. App.—Houston [1st Dist.] Sept. 30, 2014, pet. denied) (mem. op.); *Sluder v. Ogden*, No. 03-10-00280-CV, 2011 WL 116058, at *2 (Tex. App.—Austin Jan. 13, 2011, pet. denied) (mem. op.).

This is because the trial court's requirement that Woody's attorneys deposit funds in the court's registry does not "injuriously affect" Woody. See *Torrington Co. v. Stutzman*, 46 S.W.3d 829, 843 (Tex. 2000) ("Texas courts have long held that an appealing party may not complain of errors that do not injuriously affect it or that merely affect the rights of others."). Thus, because Woody, in his individual capacity and in his capacity as trustee of the Woody Trust, is the only relator named in the mandamus petition, and he is not "injuriously affect[ed]" by the requirement that his attorneys deposit funds in the court's registry, he lacks standing to challenge that portion of the Amended Order. Had Woody's attorneys joined Woody's

mandamus petition, or filed their own petition for writ of mandamus, we could consider the order as it pertains to them.

We conclude that we lack jurisdiction over the portion of Woody’s mandamus petition that challenges the May 21, 2020 Amended Order requiring Woody’s “attorneys, Paul S. Francis of Baker Hostetler, LLP, and/or Andrew M. Williams of Andrew M. Williams & Associates . . . to deposit \$500,000” in the registry of the court, and dismiss that portion of the mandamus petition for lack of jurisdiction.

Conclusion

Accordingly, we reinstate this original proceeding, and deny Woody’s petition for writ of mandamus in part and dismiss it for lack of jurisdiction in part. *See* TEX. R. APP. P. 52.8(c).

April Farris
Justice

Panel consists of Justices Kelly, Hightower, and Farris.