

Petition for Writ of Mandamus Denied and Memorandum Opinion filed January 21, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-00001-CV

IN RE ELIZABETH THOMAS, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS

MEMORANDUM OPINION

On January 7, 2010, relator Elizabeth Thomas filed a petition for writ of mandamus seeking relief from rulings by the Honorable Joseph J. Halbach, presiding judge of the 333rd District Court of Harris County, in cause number 2008-50750, styled *Elizabeth Thomas v. Dorothy Elizabeth Cook and Ardyss International, Inc.* See Tex. Gov't Code Ann. § 22.221 (Vernon 2004); see also Tex. R. App. P. 52. Thomas also filed an emergency motion for stay of the trial court's December 4, 2009, order compelling her deposition on December 17, 2009. See Tex. R. App. P. 52.10.

On October 2, 2009, the trial court signed a final judgment confirming an arbitration award in the underlying case. The judgment ordered Thomas to pay \$54,062.73 to Cook

and \$48,638.68 to Ardyss International pursuant to the arbitration award. Thomas appealed the judgment, and her appeal is pending under this court's case number 14-09-00892-CV.

Thomas raises six issues in her petition; five of these issues challenge the judgment confirming the arbitration award. In summary, she asserts that (1) the trial court lacked jurisdiction over Ardyss International; (2) the trial court erroneously ordered arbitration and should not have confirmed the arbitration award; (3) the trial court improperly denied her voluntary dismissal; (4) the trial court erroneously awarded attorney's fees on Cook's fraud allegation; (5) the underlying judgment is interlocutory and the trial court abused its discretion in permitting execution on the judgment; and (6) the trial court abused its discretion in ordering sanctions for non-appearance at a deposition and the court's post-judgment discovery order violates her substantive rights.

Mandamus will issue if the relator establishes a clear abuse of discretion for which there is no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004). The underlying judgment is final and appealable. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 192-93 (Tex. 2001) (discussing finality of judgments rendered without a conventional trial on the merits). Orders compelling arbitration may be reviewed on appeal from the final judgment. *See Chambers v. O'Quinn*, 242 S.W.3d 30, 31 (Tex. 2007). Because Thomas has appealed the final judgment, she has an adequate remedy to challenge it and she is not entitled to mandamus relief.

In her final issue, Thomas challenges the trial court's post-judgment order. Some post-judgment orders are final and appealable. *See, e.g., Burns v. Miller, Hiersche, Martens & Hayward, P.C.*, 909 S.W.2d 505, 506 (Tex. 1995) (holding turnover orders are final and appealable). Post-judgment discovery orders may be reviewed by mandamus, however. *See Parks v. Huffington*, 616 S.W.2d 641, 644-45 (Tex. Civ. App.—Houston [14th Dist.] 1981, writ ref'd n.r.e).

Thomas initially challenges the order awarding sanctions for her non-appearance at a previously noticed deposition. When the trial court granted Cook's motion to compel Thomas's post-judgment deposition by order signed December 4, 2009, the court awarded \$1,000 sanctions to Cook. Sanctions orders are appealable with the final judgment. *In re Smith*, 192 S.W.3d 564, 569 (Tex. 2006). Therefore, Thomas also has an adequate remedy to attack the sanctions order through her pending appeal.

Finally, Thomas alleges her rights are being violated by post-judgment discovery. Thomas claims that the trial court's post-judgment order interferes with the related action in federal court and that her right to defend herself in that litigation will be prejudiced by post-judgment discovery in the state court action. She asserts mandamus is appropriate, citing *In re Reliant Energy, Inc.*, 159 S.W.3d 624, 626 (Tex. 2005) (granting mandamus relief to enforce mandatory venue statute). According to the arbitration award, Thomas brought suit in federal court asserting the same causes of action as alleged in the state court. The federal action was ordered to arbitration and assigned to the same arbitrator. The award states that it is in full settlement of all claims and counterclaims. Thomas has not demonstrated how post-judgment discovery will interfere with the federal court's jurisdiction, and she is therefore not entitled to mandamus relief on this basis.

To the extent that Thomas has asserted that the trial court lacked jurisdiction to enter its post-judgment order, her contention is without merit. While the trial court's power to vacate, modify, correct or reform a judgment ceases on the expiration of its plenary power under Texas Rule of Civil Procedure 329b, the court's power to enforce its judgment is not so limited. *Arndt v. Farris*, 633 S.W.2d 497, 499 (Tex. 1982). Rule 621a is an aid to enforcement of the court's judgment and the trial court has continuing jurisdiction over post-judgment discovery as set forth in the rule. *Arndt*, 633 S.W.2d at 499. Post-judgment discovery proceedings are authorized as long as the judgment has not been suspended by a supersedeas bond or court order and has not become dormant. Tex. R. Civ. P. 621a. The judgment in this case has not been superseded or otherwise suspended. Thomas has not

shown that the trial court's post judgment order is subject to mandamus.

Thomas has not established that she is entitled to mandamus relief. Accordingly, we deny the petition for writ of mandamus and motion for stay.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Anderson and Christopher.