

Petition for Writ of Prohibition Denied and Memorandum Opinion filed February 4, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-00093-CV

IN RE MARION H. TINDALL, Individually and d/b/a COTTAGE SCHOOL SYSTEM, INC. and COTTAGE SCHOOL SYSTEM, INC., Relators

**ORIGINAL PROCEEDING
WRIT OF PROHIBITION**

MEMORANDUM OPINION

On February 3, 2010, relators, Marion H. Tindall, Individually and d/b/a Cottage School System, Inc. and Cottage School System, Inc, filed a petition for writ of prohibition in this court. *See* Tex. Gov't Code Ann. § 22.221 (Vernon 2004); *see also* Tex. R. App. P. 52. In the petition, relators asked this court to issue a writ to prevent the trial court from considering the real party in interest's motion to enforce the judgment and to compel post-judgment discovery in the underlying case, styled *Hibbs-Hallmark & Company v. Marion H. Tindall, Individually and d/b/a Cottage School System, Inc. and Cottage School System, Inc.*, in trial court cause number 2006-10417 in the 125th District Court in Harris County. Relators also filed an emergency motion for temporary relief, seeking a stay of the

hearing scheduled February 8, 2010, pending our decision on the petition. *See* Tex. R. App. P. 52.10.

An appeal from the final judgment in the underlying case is currently pending under this court's case number 14-09-00163-CV. The judgment awarded the following: \$9,698 in damages, \$17,500 for attorney's fees, pre-judgment interest at the rate of 5% from August 20, 2004, post-judgment interest from November 20, 2008, and costs of court. Appellants filed a cash bond to supersede the judgment in the amount of \$13,000. Texas Rule of Appellate Procedure 24.2 requires that the amount of security for a money judgment must equal the sum of compensatory damages, interest for the estimated duration of the appeal and costs. *See also* Tex. Civ. Prac. & Rem. Code § 52.006(a). The real party in interest, Hibbs-Hallmark & Company, asserted in its motion to enforce that appellants' security is inadequate.

A writ of prohibition is used to protect the subject matter of an appeal or to prohibit an unlawful interference with enforcement of a superior court's order and judgments. *Sivley v. Sivley*, 972 S.W.2d 850, 863-64 (Tex. App.--Tyler 1998, orig. proceeding). The writ is designed to operate like an injunction issued by a superior court to control, limit, or prevent action in a court of inferior jurisdiction. *Holloway v. Fifth Court of Appeals*, 767 S.W.2d 680, 682 (Tex. 1989). The same principles control both a writ of prohibition and writ of mandamus when used to correct the unlawful assumption of jurisdiction by an inferior court. *Tilton v. Marshall*, 925 S.W.2d 672, 676 n. 4 (Tex. 1996).

. A trial court may not enter an order that interferes with our jurisdiction after an appeal has been perfected. *See Bidas Corp. v. Unocal Corp.*, 16 S.W.3d 887, 889 (Tex. App.—Houston [14th Dist.] 2000, pet. dismiss'd w.o.j.) (holding that trial court possessed jurisdiction to issue anti-injunction relief following perfection of appeal because the trial court's order did not undermine or interfere with appellate court jurisdiction or modify the

final judgment). The trial court's action on the pending motion will not moot our appeal or otherwise destroy or interfere with our jurisdiction over the appeal.

In addition, the trial court retains jurisdiction to enforce its judgment and to rule on post-judgment discovery *as long as the judgment has not been superseded*. Tex. R. Civ. P. 621a. The trial court may determine if the amount of security is sufficient to supersede the judgment, and relators may seek review of the trial court's ruling concerning the amount of security required by filing a motion in the appeal. *See In re Smith*, 192 S.W.3d 564 (Tex. 2006) (reviewing trial court orders setting aside cash deposits in lieu of supersedeas bond); Tex. R. App. P. 24.4.

Relators have not established that they are entitled to extraordinary relief. Accordingly, we deny relators' petition for writ of prohibition and emergency motion for temporary relief.

PER CURIAM

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