

Petition for Writ of Mandamus Denied and Memorandum Opinion filed December 30, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-01234-CV

**IN RE CATHY L. SCARVER, AS TRUSTEE OF THE BANKRUPTCY ESTATE
OF MORTGAGE FUNDING NETWORK, INC., Relator**

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
506th District Court
Waller County, Texas
Trial Court Cause No. 2001-04-5213**

MEMORANDUM OPINION

On December 16, 2010, relator, Cathy L. Scarver, as Trustee of the Bankruptcy Estate of Mortgage Funding Network, Inc., filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code § 22.221; *see also* Tex. R. App. P. 52. Relator asks this court to direct the respondent, the Honorable Albert McCaig, presiding judge of the 506th District Court of Waller County, to grant the relief sought in a Motion to Show Cause Regarding Failure to comply with Consent Order to Release excess funds in trial court

cause number 2001-04-5213, styled *Royal Independent School District v. Janice A. Phillips, et al* filed in the 506th District Court of Waller County, Texas.¹

The underlying case began as a delinquent tax suit filed by Royal ISD against Janice Phillips, the landowner of real property located in Waller County, and Mortgage Funding Network, Inc. (“MFNI”), a lienholder. MFNI was a debtor in a Chapter 7 bankruptcy proceeding. John W. Ragsdale served as trustee to MFNI's bankruptcy estate, and now Cathy L. Scarver is the new trustee. Brookshire Katy Drainage District later intervened in the suit.

The property was sold in a tax sale on June 3, 2003, resulting in excess proceeds in the amount of \$23,474.24. The excess proceeds were deposited with the district clerk's office, and Waller County sent a notice of excess proceeds to both MFNI and Phillips. On June 2, 2005, Ragsdale, on behalf of MFNI, filed a motion to withdraw the excess proceeds pursuant to section 34.04 of the Tax Code. Section 34.04 provides in part that “a person . . . may file a petition in the court that ordered the . . . sale setting forth a claim to . . . excess proceeds. The petition must be filed before the second anniversary of the date of the sale of the property.” Tex. Tax Code § 34.04(a). Ragsdale filed his motion claiming a right to the excess proceeds one day before the two-year deadline. He failed to set the motion for a hearing or obtain a ruling on the motion. Four months later, on October 13, 2005, the district clerk disbursed the excess funds to Royal ISD in the amount of \$21,831.04 and to the Drainage District in the amount of \$1,643.20. The district clerk's disbursement was pursuant to section 34.03 of the Tax Code, which provides that the clerk of the court shall distribute the excess proceeds from a tax sale to each taxing unit who participated in the sale “if no claimant *establishes* entitlement to the proceeds” within two years after the date of the tax sale, unless otherwise ordered by the court. *Id.* § 34.03 (emphasis added).

¹ The Consent Order was issued by the 9th District Court. The 506th District Court was created in 2007, and all Waller County cases pending in the 9th District Court were transferred to the 506th District Court. *See* Act eff. Sept. 1, 2007, 80th Leg., ch. 1342, § 9.

On February 1, 2006, Ragsdale filed a second motion to withdraw the funds. On February 17, 2006, the trial court signed an order titled “Consent Order to Release Excess Funds” (“Consent Order”). The Consent Order, signed by the trustee and his attorney, stated that the parties agreed that MFNI had a valid interest in the excess proceeds and authorized the “Clerk of Waller County” to immediately release “the funds being *currently held* in the registry of the Court” to Ragsdale. (emphasis added). Because the district clerk had previously released the funds to Royal ISD and the Drainage District, Ragsdale has been unable to recover the excess proceeds from the district clerk.

Royal ISD challenged the trial court’s jurisdiction to enter the Consent Order and other orders relating to the funds, but its motion to dismiss was denied. Royal ISD attempted to appeal the denial, along with the Consent Order and other orders relating to the funds. This court dismissed the appeal for want of jurisdiction. *See Royal I.S.D. v. Ragsdale*, 273 S.W.3d 759 (Tex. App.—Houston [14th Dist.] 2008, no pet.).

In 2010, relator filed a Motion to Show Cause, which sought disbursement of the claimed funds, a judgment against the district clerk for the amount of the wrongfully disbursed funds, plus interest and attorney’s fees. Relator also sought to have the clerk held in contempt, fined, and jailed until she complies with the Consent Order to pay the claimed funds. On October 5, 2010, the trial court denied relator’s motion, and relator filed this original proceeding asking that we command the respondent to grant the relief sought in the motion.

Mandamus relief is available only to correct a clear abuse of discretion for which the relator has no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004). The adequacy of an appellate remedy should be determined by a “practical and prudential” balancing of the benefits and detriments of mandamus review. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136-37 (Tex. 2004).

Courts have the inherent power to enforce their judgments. *Arndt v. Farris*, 633 S.W.2d 497, 499 (Tex. 1982). The trial court’s enforcement order may not, however, be inconsistent with the original judgment or constitute a material change in the substantive adjudicative portions of the judgment. *Commission for Lawyer Discipline v. Denisco*, 132 S.W.3d 211, 215 (Tex. App.—Houston [14th Dist.] 2004, no pet.). .

When the Consent Order was signed, there were no funds *currently* held in the registry of the court, having been released four months earlier. Relator is seeking to change the terms of that order to require the clerk to get the money back from the taxing entities. Relator also seeks attorney’s fees that were not provided for in the Consent Order. Relator has not established that the trial court abused its discretion in denying the motion to show cause. Accordingly, we deny the petition for writ of mandamus.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Seymore and Jamison.