

Petition for Writ of Mandamus Denied and Memorandum Opinion filed March 29, 2011.



In The

Fourteenth Court of Appeals

NO. 14-11-00174-CV

IN RE WILMA REYNOLDS, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
300th District Court
Brazoria County, Texas
Trial Court Cause No. 48170**

MEMORANDUM OPINION

On March 2, 2011, relator Wilma Reynolds filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. §22.221 (Vernon 2004); *see also* Tex. R. App. P. 52. In the petition, relator asks this court to compel the Honorable Randall Hufstetler, presiding judge of the 300th District Court of Brazoria County to vacate his discovery orders.

Background

On November 9, 2009, relator filed a request for modification of the terms of conservatorship and of possession of and access to her children in cause number 48170 in the 300th District Court in Brazoria County. On May 12, 2010, real party in interest David Reynolds filed a motion for partial no-evidence summary judgment alleging adequate time for discovery had elapsed and relator produced no evidence to demonstrate her request for changes in conservatorship or changes in possession and access. On July 7, 2010, the trial court granted a partial summary judgment.

On December 28, 2010, the associate judge for the 300th District Court, Judge James Robertson, held a hearing on two motions to quash and for protection filed by real party. Relator served subpoenas on Bank of America and Morgan Stanley seeking real party's financial records. Real party sought an order quashing the subpoenas and protecting him from disclosure of his financial records. At the hearing, real party's attorney represented that he had produced his income information in terms of his work statements and income tax returns. At the conclusion of the hearing, Associate Judge Robertson granted the motions for protection.

On February 3, 2011, the respondent held a hearing on relator's motion for continuance, motion to compel real party to prepare a financial statement, motion to compel production of documents from Quantlab Trading Partners and Quantlab Incentive Partners (Quantlab), motion for new trial, and motion for the judge to confer with the children. The court also heard real party's motion for Rule 13 sanctions. *See* Tex. R. Civ. P. 13.

Relator filed this petition for writ of mandamus complaining of the court's rulings on her (1) motions to compel financial records, (2) motions to compel discovery from

Quantlab, (3) motion for new trial, and (4) motion for the judge to confer with the children. She further complains of the trial court's sanctions order.

Mandamus Standard

A party is entitled to mandamus relief if a trial court violates a legal duty or abuses its discretion, and the party has no adequate remedy at law. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004). A trial court abuses its discretion if “it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law.” *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992). With respect to factual issues, matters are committed to the trial court's discretion and the reviewing court may not substitute its judgment for that of the trial court. *Id.* To obtain relief, relator must establish that the trial court reasonably could have reached only one decision. *Id.* at 840. An order compelling discovery that exceeds the proper bounds is subject to mandamus review. *In re Am. Optical Corp.*, 988 S.W.2d 711, 714 (Tex. 1998).

Motions for Financial Records from Bank of America, Morgan Stanley, Quantlab Trading Partners, and Quantlab Incentive Partners

Relator claims she is entitled to the documents requested from Bank of America, Morgan Stanley, and Quantlab Partners because the records are relevant to real party's financial resources and his ability to support the children. Despite the fact that the children live with the real party, relator filed a claim for child support. Section 154.063 of the Family Code requires a *party* to furnish information sufficient to accurately identify that party's net resources and ability to pay child support, and produce copies of income tax returns for the past two years, a financial statement, and current pay stubs. Tex. Fam. Code Ann. § 154.063. The court determined that realtor was entitled to Financial Information Statement, which would include those items required by section 154.063 of the Family Code, i.e., two years' tax returns, a financial statement, and current pay stubs. The court noted that real party had produced all documents required by the

Family Code. The trial court did not abuse its discretion in denying discovery from the financial institutions that are not parties to the modification suit.

Motion for New Trial and Motion for Judge to Confer with Children

Relator filed a motion for new trial seeking reconsideration of the court's partial summary judgment order of July 7, 2010. In connection with her motion for new trial, relator filed a motion for the judge to confer with the children. The court determined that the motion for new trial was premature because there was no final judgment. The court agreed to consider both motions once a final judgment was entered. The trial court did not abuse its discretion in deferring consideration of relator's motions.

Sanctions Order

Finally, relator complains of the trial court's order of sanctions against her for bringing frivolous motions. The trial court found that each of relator's motions to compel discovery were frivolous. Despite the fact that the motion for new trial and motion to confer with the children were timely filed, they were premature and, in the opinion of the court, "a waste of this Court's time, the attorneys' times, and the parties' resources." The court ordered \$10,000 in sanctions to be paid by 5:00 the next day. Relator did not represent to the court that payment of the sanctions would threaten her ability to proceed with the underlying action, nor did she request that payment of the monetary sanctions be postponed until final judgment.

In her petition for writ of mandamus, relator alleges that the monetary sanctions threaten her ability to proceed with the underlying action. This court recently determined that in order to be entitled to mandamus relief for monetary sanctions, a relator is required to advise the trial court that the monetary sanctions would preclude continuation of the litigation. *In re Le*, 14-11-00132-CV; 14-11-00156-CV; 2011 WL 727573 (Tex. App.—Houston [14th Dist.] March 3, 2011, orig. proceeding). Relator did not advise the

trial court that the monetary sanctions would prevent her from continuing the underlying litigation. Further, she did not ask the trial court to set aside the sanctions order, or postpone payment of the sanctions, nor did she request emergency relief from this court.

Relator has not established entitlement to the extraordinary relief of a writ of mandamus. Accordingly, we deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Anderson, Seymore, and McCally.