Petition for Writ of Mandamus Conditionally Granted and Memorandum Opinion filed September 13, 2011.

In The

Fourteenth Court of Appeals

NO. 14-11-00535-CV

IN RE SWIFT TRANSPORTATION COMPANY, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS
253rd District Court
Chambers County, Texas
Trial Court Cause No. CV-26088

M E M O R A N D U M O P I N I O N

On June 21, 2011, relator, Swift Transportation Company, filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code § 22.221; *see also* Tex. R. App. P. 52. Swift complains that respondent, the Honorable Chap Cain, presiding judge of the 253rd District Court of Chambers County, abused his discretion when he denied Swift's motion to quash a deposition of its corporate representative(s) and motion for a protective order. Swift also filed a motion for a temporary stay of the deposition, which this court granted on June 21, 2011. *See* Tex. R. App. P. 52.10.

Background

Swift is a national trucking company. In the underlying lawsuit, the real party in interest, Nicole Shealey, sued Swift and its employee driver for injuries she sustained in an accident with a Swift tractor-trailer. Among other claims, Shealey sued Swift for negligence and gross negligence, based on theories of negligent hiring, negligent supervision, negligent training and respondeat superior.

On June 17, 2011, Shealey's counsel served Swift's counsel with a deposition notice. At issue in this proceeding is item 5 of the notice, which seeks to depose Swift's "risk manager or person(s) most knowledgeable about any and all injury or death claims, for the ten (10) years prior to the wreck made the basis of this lawsuit, filed against Swift; this request includes, but is not limited to, the person or persons who have the ability to produce loss run reports and/or other summary information regarding claims, as well as claims information and/or claims files." Swift filed an objection, motion to quash, motion for protective order, and a supplement thereto. Shealey filed a motion to compel and a response to the motion to quash. After a hearing, the trial court signed an order on June 20, 2011, denying Swift's motion to quash the deposition and motion for a protective order. Swift then filed this proceeding, and the real party in interest has responded to the petition.

Mandamus Standard

Mandamus is available to correct a clear abuse of discretion when the relator has no adequate remedy by appeal. *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, or if it clearly fails to analyze or apply the law correctly. *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005).

Scope of Discovery Orders

The scope of discovery is within the trial court's discretion, but the trial court must make an effort to impose reasonable discovery limits. *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003). An order that compels overly broad discovery is an abuse of discretion for which mandamus is the proper remedy. *Id.* at 153 (holding that relator lacked adequate remedy by appeal where discovery order compelled production of "patently irrelevant" documents); *Walker v. Packer,* 827 S.W.2d 833, 843 (Tex. 1992) (holding no adequate appellate remedy exists when an order compels discovery of irrelevant documents constituting harassment or imposing a burden far out of proportion to any benefit to the requesting party). Texas Rule of Civil Procedure 192.3 permits a party to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party." Tex. R. Civ. P. 192.3.

Orders requiring discovery covering an unreasonably long time period or distant and unrelated locales are impermissibly overbroad. *In re Am. Optical*, 988 S.W.2d 711, 713 (Tex. 1998); *see also Dillard Dep't Stores, Inc. v. Hall*, 909 S.W.2d 491, 492 (Tex. 1995) (request for every claim file or incident report involving false arrest, civil rights violations, and use of excessive force from every store in department store's chain for last five years was overbroad); *K Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996) (request for description of all criminal conduct at defendant's parking lot during preceding seven years was overbroad). Discovery requests must be reasonably tailored to include only matters relevant to the case. *In re Am. Optical*, 988 S.W.2d at 713. Because discovery is limited to matters that are relevant to the case, requests for information that are not reasonably tailored as to time, place, or subject matter amount to impermissible "fishing expeditions." *See CSX Corp.*, 124 S.W.3d at 152; *see also In re Xeller*, 6 S.W.3d 618, 626-27 (Tex. App.—Houston [14th Dist.] 1999, orig. proceeding).

Discussion

In its sole issue, Swift asserts that the trial court abused its discretion by ordering it to produce a corporate representative or representatives to testify about all injury and death claims asserted against it during the ten years before Shealey's accident. Swift asserts that more than 1,000 auto liability claims related to accidents involving Swift vehicles were opened in 2010 alone. Swift objected to item 5 in the deposition notice, asserting that it is overbroad, unduly burdensome, and not sufficiently narrowed in time or scope to lead to the discovery of admissible evidence. We agree that a ten-year time span is overbroad on this record..

The deposition notice at issue covers a ten-year period of claims against a national company. The information goes far beyond matters relevant to the underlying case. Requests must be reasonably tailored to include only matters relevant to the case. *In re Am. Optical*, 988 S.W.2d at 713. Shealey has not established the relevance of the information requested. Shealey asserts that the information sought "might well show" that Swift has engaged in a pattern of negligent hiring and supervising that would support her gross negligence claim. It appears that the information sought amounts to an impermissible "fishing expedition." *See In re Lowe's Companies, Inc.,* 134 S.W.3d 876, 879 (Tex. App.—Houston [14th Dist.] 2004, orig. proceeding) (citing *In re CSX Corp.*, 24 S.W.3d at 152).

We hold that item 5 in Shealey's notice for the deposition of Swift's corporate representative is overbroad, and the trial court abused its discretion in denying Swift's motion for protection and motion to quash the deposition. *See In re Allstate County Mut. Ins. Co*., 227 S.W.3d 667, 669 (Tex.2007) (orig. proceeding) (per curiam) trial court's order was abuse of discretion because it did not limit discovery requests which were overbroad as to time and scope). An appellate court would not be able to cure the trial court's discovery error. Accordingly, Swift has no adequate remedy by appeal. *See*

Walker v. Packer, 827 S.W.2d at 843.

Conclusion

We conditionally grant mandamus relief and direct the trial court to vacate its June 20, 2011 order denying Swift's motion for protection and to quash the deposition of its corporate representative and compelling the deposition. The writ will issue only if the trial court fails to act in accord with this opinion. This court's stay order issued June 21, 2011, remains in effect until the trial court's June 20, 2011, order requiring the deposition of Swift's corporate representative pursuant to item 5 of Shealey's notice is vacated, or until further order of this court.

PER CURIAM

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