

Petition for Writ of Mandamus Denied and Memorandum Opinion filed July 14, 2011.



In The

**Fourteenth Court of Appeals**

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NO. 14-11-00595-CV

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**IN RE MCKAIN JOSEPH DENNIS, JR., GUARDIAN OF THE PERSON OF  
WILMA JEAN DENNIS, AN INCAPACITATED PERSON, Relator**

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**ORIGINAL PROCEEDING  
WRIT OF MANDAMUS  
Probate Court  
Galveston County, Texas  
Trial Court Cause No. PR 0069538**

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**MEMORANDUM OPINION**

On July 12, 2011, relator McKain Joseph Dennis, Jr. filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. §22.221; *see also* Tex. R. App. P. 52. In the petition, relator asks this court to compel the Honorable James E. Scanlan, Jr., presiding judge of the Probate Court of Galveston County to vacate his order denying relator's motions to dismiss real-party-in-interest Janet Latimer's motions for lack of

standing. Relator filed with his petition a request for temporary relief, asking this court to stay an oral order of the respondent.

### **Background**

On July 28, 2008, relator McKain Joseph Dennis (Mac) was named guardian of his wife, Wilma Jean Dennis (Jean). Real party Latimer is Jean's daughter who also sought guardianship. On October 21, 2009, Mac filed a motion in limine pursuant to section 642 of the Probate Code requesting an order from the probate court that Latimer had interests adverse to Jean and that Latimer lacked standing to participate in the guardianship proceeding. On February 11, 2010, the trial court granted Mac's motion in limine and declared that based on her adverse interest, Latimer lacked standing to participate in the guardianship proceeding, but she may participate in any restoration hearing regarding Jean. Latimer did not appeal the February 11, 2010 order.

On March 11, 2011, Latimer filed a motion to enforce visitation rights, motion for case investigator visit and report, and application for appointment of temporary and permanent guardian. Mac moved to dismiss Latimer's motions on the grounds that she lacked standing. On June 30, 2011, the trial court entered an order denying Mac's motions to dismiss. Mac seeks mandamus relief from the June 30, 2011 order.

Absent extraordinary circumstances not present here, a denial of a motion to dismiss is a ruling incident to the ordinary trial process that will not be corrected by mandamus, but by the legal remedy of the ordinary appellate process. *Hooks v. Fourth Court of Appeals*, 808 S.W.2d 56, 59 (Tex. 1991) (orig. proceeding). Relator has not presented extraordinary circumstances for issuance of mandamus to correct the trial court's ruling on his motion to dismiss Latimer's motions.

### **Emergency Motion**

According to relator's emergency motion, a hearing was held on Mac's motions in which the trial court orally ordered that Latimer is entitled to weekly visitation with Jean, and such visitations shall begin July 13, 2011 at 10:00 a.m. However, the court reporter has not prepared a transcription of the hearing, and there is no written order on the visitation rights. Nonetheless, relator asks this court to stay the trial court's order permitting visitation. Because relator did not file either a written order or record of an oral order, we deny temporary relief. *See* Tex. R. App. P. 52.3(k)(1)(A).

Relator has not established entitlement to the extraordinary relief of a writ of mandamus. Accordingly, we deny relator's petition for writ of mandamus and also deny relator's related emergency motion for temporary relief.

PER CURIAM

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