Petition for Writ of Mandamus Denied, in Part, and Dismissed, in Part, and Memorandum Opinion filed February 7, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-01013-CV

IN RE TED LAWRENCE ROBERTSON, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS
312th District Court
Harris County, Texas
Trial Court Cause No. 2001-35725

MEMORANDUM OPINION

On December 20, 2016, relator Ted Lawrence Robertson filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. § 22.221 (West 2004); *see also* Tex. R. App. P. 52. In the petition, relator asks this court to compel the

Honorable David Farr, presiding judge of the 312th District Court of Harris County, to vacate an August 15, 2001 default protective order.

Relator claims that the default protective order entered by the trial court on August 15, 2001, is void because the trial court (1) lacked proof of service of the application for a protective order; and (2) did not wait until the executed citation had been on file with the court for ten days before signing the default protective order.[1]

A litigant may only attack a voidable judgment directly. *PNS Stores, Inc. v. Rivera*, 379 S.W.3d 267, 271 (Tex. 2012). A litigant may attack a void judgment either directly or collaterally. *Id.* A direct attack may be made by motion for new trial, appeal, or a bill of review. *Id.* A direct attack attempts to correct, amend, modify, or vacate a judgment and must be brought within a certain time period after the judgment's rendition. *Id.*

A litigant can collaterally attack a void judgment at any time. *Id.* at 272. A collateral attack seeks to avoid the binding effect of a judgment in order to obtain specific relief, which the judgment currently impedes. *Id.* After the time has expired to bring a direct attack on judgment has expired, a litigant may only attack a judgment collaterally. *Id.*

A judgment may be subject to collateral attack when the failure to establish personal jurisdiction violates due process. *Id.* at 273. There is a distinction

[1] *See* Tex. R. Civ. P. 107(h) ("No default judgment shall be granted in any cause until proof of service . . . shall have been on file with the clerk of the court ten days, exclusive of the day of filing and the day of judgment").

between technical defects in service and a complete failure or lack of service. *Id.* at 274. A complete lack of service renders a judgment void. *Id.* A judgment is also void if the defects in service are so substantial that the defendant was not afforded due process. *Id.* at 275. Technical defects in service, which are not so substantial as to deprive a defendant of a meaningful opportunity to appear and answer the plaintiff's claims, render a judgment voidable, not void. *Id.* When a defective citation is served, but the citation puts the defendant on notice of the claims in a pending suit, the technical defects are not of the type that deprive the defendant of the opportunity to be heard and do not support a collateral attack. *Id.*

Relator's complains of technical defects in service. Relator was put on notice of the application for a protective order and the defects about which relator complains are not the type that deprived him of the opportunity to be heard. Therefore, the alleged technical defects rendered the judgment voidable, not void. The trial court's failure to wait for the executed citation to be on file for ten days before granting the application also did not render the default protective order void. *See id.* at 273.

Relator has not shown that he does not have an adequate remedy by appeal. Relator did not utilized any of the appellate remedies—motion for new trial, regular appeal, restrictive appeal, or bill of review—that were available to him. That relator not did not timely pursue one to those adequate legal remedies does not justify mandamus relief.[2]

[2] *See In re Tex. Dep't of Family & Protective Servs.*, 210 S.W.3d 609, 614 (Tex. 2006) orig. proceeding) (concluding that an accelerated appeal would have provided an adequate

Relator also named Justice Eva Guzman of the Texas Supreme Court, Judge James Squier, former judge of the 312th District Court, and "Judge Michael Squier" as respondents.

Section 22.221 of the Texas Government Code expressly limits the mandamus jurisdiction of the courts of appeals to: (1) writs against a "judge of a district or county court in the court of appeals district"; and (2) all writs necessary to enforce the court of appeals' jurisdiction. Tex. Gov't Code Ann. § 22.221. We do not have jurisdiction over a former district judge or a Texas Supreme Court justice. We know of no "Judge Michael Squire," and we have no jurisdiction over him. Relator has not shown that issuance of a writ against these additional respondents is necessary to enforce our jurisdiction.

Relator has not established that he is entitled to mandamus relief. Accordingly, we deny relator's petition for writ of mandamus, in part, and dismiss it, in part, for lack of jurisdiction.

PER CURIAM

Panel consists of Justices Christopher, Jamison, and Donovan.

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remedy); *In re Sims*, No. 12-15-00190-CV, 2016 WL 4379490, at *1 (Tex. App.—Tyler Aug. 17, 2016, orig. proceeding) (mem. op.) (holding that the relator could not attack the trial court's ruling by writ of mandamus even if his appellate remedy was no longer available); *In re Hart*, 351 S.W.3d 71, 77 (Tex. App.—Texarkana 2011, orig. proceeding) (holding that the relator's "[f]ailure to comply with the rules that would have given [relator] time to file his notice of appeal was not a sufficient excuse to justify issuance of mandamus") (internal quotations and citation omitted); *In re Pannell*, 283 S.W.3d 31, 35–36 (Tex. App.—Fort Worth 2009, orig. proceeding) (denying mandamus relief where the relator had other adequate legal remedies—direct appeal, restricted appeal, and bill of review—but did not timely exercise those remedies).