

Court Of Appeals
Fourth Court of Appeals District of Texas
San Antonio



MEMORANDUM OPINION

No. 04-05-00305-CV

**IN RE METHODIST SYSTEM OF SAN ANTONIO, LTD. D/B/A METROPOLITAN
METHODIST HOSPITAL**

Reconsideration of Original Mandamus Proceeding¹


PER CURIAM

Sitting: Karen Angelini, Justice
Rebecca Simmons, Justice
Steven C. Hilbig, Justice

Delivered and Filed: December 17, 2008

PETITION FOR WRIT OF MANDAMUS DENIED

On May 25, 2005, this court denied a petition for writ of mandamus filed by relator Methodist System of San Antonio, Ltd. d/b/a Metropolitan Methodist Hospital (“Methodist”) in a health care liability suit brought by real parties in interest Beatriz Favela, et al. *See In re Methodist Healthcare Sys. of San Antonio, Ltd.*, 256 S.W.3d 313 (Tex. App.—San Antonio 2005, orig. proceeding). The petition was filed after relators moved for dismissal of the case and sanctions on the ground that the expert reports filed by real parties in interest were inadequate. TEX. REV. CIV.

¹  This proceeding arises out of Cause No. 2003-CI-13501, styled *Beatriz Favela, et al. v. Jairo Ramirez, M.D. and Methodist Healthcare System of San Antonio, Ltd. d/b/a Metropolitan Methodist Hospital*, pending in the 288th Judicial District Court, Bexar County, Texas, the Honorable Barbara Nellermoe presiding.

STAT. art. 4590i, § 13.01(d) (repealed 2003). The trial court denied the motion to dismiss, and relator subsequently filed the petition for writ of mandamus in this court. This court denied relator's petition on the basis that an adequate remedy by appeal existed.

On July 26, 2005, relators filed a petition for writ of mandamus in the Texas Supreme Court, seeking relief from this court's decision. Based on its recent decision in *In re McAllen Medical Center*, No. 05-0892, 2008 WL 4051053 (Tex. Aug. 29, 2008) (orig. proceeding), the supreme court held this court erred in denying relator's petition on the basis that relator had an adequate remedy by appeal. *In re Methodist Healthcare Sys. of San Antonio, Ltd.*, 256 S.W.3d 263 (Tex. 2008) (orig. proceeding). *In re McAllen* concluded that an appeal is not always an adequate remedy in these circumstances. *In re McAllen*, 2008 WL 4051053, at *1. Consequently, the supreme court conditionally granted the writ of mandamus and ordered this court to reconsider its action in light of the supreme court's opinion in *In re McAllen*. *In re Methodist*, 256 S.W.3d at 264.

According to the supreme court's instructions, we have reconsidered relator's original petition and have considered the supplemental petition, response, and reply filed after the supreme court's decision conditionally granting the writ of mandamus. Based on the record before us, we conclude that the expert reports filed by the real parties in interest are adequate. As a result, we hold the relator has failed to show the trial court clearly abused its discretion in failing to deny relator's motion to dismiss. *See Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 878 (Tex. 2001); *see also In re McAllen*, 2008 WL 4051053, at *1. Accordingly, the petition for writ of mandamus is DENIED. *See TEX. R. APP. P. 52.8(a)*.

PER CURIAM