

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



MEMORANDUM OPINION

No. 04-10-00471-CV

IN RE Edward Alan **VEHLE**, Relator

Original Mandamus Proceeding¹

PER CURIAM

Sitting: Catherine Stone, Chief Justice
Santee Bryan Marion, Justice
Steven C. Hilbig, Justice

Delivered and Filed: July 7, 2010

PETITION FOR WRIT OF MANDAMUS DENIED

This original proceeding arises out of a suit for possession of or access to a child by a grandparent. On June 24, 2010, relator, the child's father, filed a petition for a writ of mandamus, contending the trial court abused its discretion by (1) issuing temporary orders that named the grandparent a possessory conservator of the child, ordered a psychological examination of the child, and appointed an attorney ad litem; (2) issuing temporary orders without an evidentiary hearing; and (3) failing to dismiss the suit pursuant to section 153.432(c) of the Texas Family Code. This court

¹[☒](#) This proceeding arises out of Cause No. 2010-CI-08827, styled *In the Interest of S.M.D., a Child*, pending in the 225th Judicial District Court, Bexar County, Texas, the Honorable Janet Littlejohn presiding.

requested a response to the petition and ordered a stay of the temporary orders. On June 25, 2010, the respondent trial judge advised this court in writing that the temporary orders in the underlying proceeding had been vacated.

The trial court's order vacating the temporary orders in the underlying cause renders the issues relating to the temporary orders moot. However, relator's petition also challenges the trial court's failure to grant his motion to dismiss. Relator argues the affidavits attached to real party in interest's amended petition are insufficient to meet the threshold requirement in section 153.432(c) of the Texas Family Code. This issue is not moot.

After reviewing the petition for a writ of mandamus and the mandamus record, we conclude the trial court did not abuse its discretion by failing to dismiss the suit for possession or access by grandparent on the ground that the affidavits attached to the amended petition were insufficient to comply with the requirements of section 153.432(c) of the Texas Family Code.

Therefore, the petition for a writ of mandamus is DENIED. TEX. R. APP. P. 52.8(a). We withdraw our June 24, 2010 order requesting responses.

Relator shall pay all costs incurred in this proceeding.

The clerk of this court is directed to transmit a copy of this opinion to the attorneys of record, the trial court judge, and the trial court clerk.

PER CURIAM