



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00627-CV

IN RE AMERICAN NATIONAL COUNTY MUTUAL INSURANCE COMPANY

Original Mandamus Proceeding¹

PER CURIAM

Sitting: Sandee Bryan Marion, Chief Justice
Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: December 20, 2017

PETITION FOR WRIT OF MANDAMUS DENIED

Relator filed a petition for writ of mandamus challenging the trial court's denial of its motion to abate and compel appraisal, and the real party in interest filed a response. In the underlying dispute, the real party in interest objected to relator's motion to abate and compel appraisal on five grounds: (1) relator did not plead appraisal as an affirmative defense; (2) relator denied her claim; (3) relator instituted litigation against her inconsistent with its right to appraisal; (4) relator availed itself of court proceedings; and (5) the insurance policy's appraisal clause was unenforceable because it violated public policy. The trial court denied relator's motion without stating the basis for its ruling. In its petition for writ of mandamus, relator challenged only the first four grounds asserted by the real party in interest. Relator did not challenge the real party in

¹ This proceeding arises out of Cause No. 2016-CI-12807, styled *Inae Oh v. American National Property and Casualty Company and William Felix Dupnik, Jr.*, pending in the 438th Judicial District Court, Bexar County, Texas, the Honorable David A. Canales presiding.

interest's argument that the insurance policy's appraisal clause was unenforceable because it violated public policy.

When a trial court issues an adverse ruling without specifying its grounds for doing so, the relator must challenge each independent ground asserted by the opposing party that fully supports the adverse ruling because it is presumed the trial court considered all the asserted grounds. *In re Elamex, S.A. de C.V.*, 367 S.W.3d 879, 888 (Tex. App.—El Paso 2012, orig. proceeding). When a party fails to attack one of the possible grounds on which a judgment was granted, the judgment must be affirmed. *Id.*

Mandamus relief is available only to correct a clear abuse of discretion when there is no adequate remedy by appeal. *In re Odyssey Healthcare, Inc.*, 310 S.W.3d 419, 422 (Tex. 2010) (orig. proceeding) (per curiam). Because relator has not challenged one of the grounds raised below by the real party in interest, relator has not shown the trial court abused its discretion in denying the motion to abate and compel appraisal. *See In re Elamex*, 367 S.W.3d. at 891 (denying petition for writ of mandamus “because the trial court’s order can rest on more than one ground and Relators have not challenged all of those grounds”); *In re Baker*, 05-17-01205-CV, 2017 WL 4928192, at *1 (Tex. App.—Dallas Oct. 31, 2017, orig. proceeding) (mem. op.) (denying petition for writ of mandamus because relators addressed only two of seven grounds raised by real party in interest); *accord In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding) (stating trial court cannot abuse its discretion unless it had a legal duty to act, was asked to act, and failed or refused to act).

Therefore, we DENY the petition for writ of mandamus.

PER CURIAM