



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00576-CV

IN RE Lucas Jeffrey **BURWITZ**

Original Mandamus Proceeding¹

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Rebeca C. Martinez, Justice, dissenting with opinion to follow
Luz Elena Chapa, Justice
Irene Rios, Justice

Delivered and Filed: December 11, 2020

PETITION FOR WRIT OF MANDAMUS CONDITIONALLY GRANTED IN PART AND DENIED IN PART

Lucas Jeffrey Burwitz filed a petition for a writ of mandamus on November 30, 2020, complaining of an oral order rendered by the trial court at a hearing held November 17, 2020 that:

- (1) discharged Patricia DeVeau as the court-appointed amicus attorney; and
- (2) ordered DeVeau to prepare a written report to be admissible at trial that summarizes her work, impressions, observations and recommendations, e-file the report, and circulate it to all of the attorneys and litigants.

This court ordered Burwitz to file a supplemental letter brief and set a deadline for respondent, the real party in interest, and the amicus attorney to file responses. Burwitz filed a letter brief, and amicus attorney DeVeau filed a response in support of the petition in which she asserts the trial

¹ This proceeding arises out of Cause No. 2010-EM5-02653, styled *In the Interest of M.I.J.B., a Child*, pending in the 408th Judicial District Court, Bexar County, Texas, the Honorable Mary Lou Alvarez, presiding.

court's November 17, 2020 order violates section 107.007(a) of the Family Code and her attorney work product privilege.

After reviewing the filings in this original proceeding and the record of the November 17 hearing, we conclude relator has not shown the trial court abused its discretion in discharging the amicus attorney, appointed pursuant to Chapter 107 of the Family Code, from her duties. We further conclude the trial court's order that DeVea prepare, file, and circulate a written report that summarizes her work, impressions, observations and recommendations, violates the statutory attorney work product privilege in section 107.007(a) of the Family Code and was a clear abuse of discretion. There is no adequate remedy by appeal for the compelled disclosure of the amicus attorney's work product. *See Humphreys v. Caldwell*, 888 S.W.2d 469, 471 (Tex. 1994, orig. proceeding); *In re Monsanto Co.*, 998 S.W.2d 917, 922 (Tex. App.—Waco 1999) (orig. proceeding).

The court therefore conditionally grants the requested writ of mandamus in part and directs the trial court to vacate the part of its November 17, 2020 oral order that requires a written report.² All other relief requested in the petition is denied.

Luz Elena D. Chapa, Justice

² Nothing in this opinion or this court's order conditionally granting the writ should be construed as prohibiting DeVea from reporting child abuse or neglect as required by Family Code section 261.101 or from testifying as authorized by Rule 3.08 of the Texas Disciplinary Rules of Professional Conduct. *See* Tex. Fam. Code § 107.007(a)(4), (b).