COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-17-00254-CV

IN RE JAEMAN CHO RELATOR

ORIGINAL PROCEEDING
TRIAL COURT NO. 17-1641-431

MEMORANDUM OPINION[1]

Relator Jaeman Cho filed a petition for writ of mandamus in this court on August 2, 2017, asking us to direct Respondent, the Honorable Jonathan M. Bailey, to set aside his order of July 26, 2017. We conditionally grant the requested relief.

I. Background

On December 12, 2016, real parties in interest—two Texas companies and their Korean and Singapore affiliates (collectively, "GTC")—brought suit in Dallas

[1]*See* Tex. R. App. P. 47.4, 52.8(d).

County against Cho, a South Korean resident; David Lin, a Texas resident; and a Texas company. Cho responded by filing a special appearance challenging GTC's jurisdictional allegations and denying that he was subject to the trial court's general or specific personal jurisdiction. The case was then transferred to Denton County, where defendant David Lin resides. Cho's special appearance is set for hearing on September 14, 2017.

GTC propounded a set of 116 requests for production of documents on Cho and a virtually identical set of requests for production on Lin, the Texas resident who did not challenge jurisdiction.

Even a cursory review of the discovery requests served on Cho reveals that most bear little or no arguable connection to obtaining information regarding his general or specific contacts with Texas. In fact, the very first objection that Cho placed to all 116 requests was that they sought "documents that are not relevant to the jurisdictional facts plead and essential to justify plaintiff's opposition to the special appearance." Cho also made other objections to the requests based on their burdensomeness and scope.

GTC filed a motion to compel Cho's responses to its requests for production on June 20, 2017, arguing that Cho's objections should be overruled because they lacked merit and were mere boilerplate. On July 26, 2017, the trial court signed an order granting the motion to compel and finding that "any objections [Cho] asserted in response" to GTC's requests for production were "obscured by [Cho's] numerous unfounded objections and therefore waived."

The trial court also ordered Cho to "produce all documents responsive" to the 116 requests on or before 5:00 p.m. on August 2, 2017.

II. Standard of Review

Mandamus relief is proper only to correct a clear abuse of discretion when there is no "adequate remedy at law, such as a normal appeal." *In re H.E.B. Grocery Co., L.P.*, 492 S.W.3d 300, 304 (Tex. 2016) (orig. proceeding) (quoting *State v. Walker*, 679 S.W.2d 484, 485 (Tex. 1984) (orig. proceeding)). A party lacks an adequate remedy on appeal when the benefits of mandamus outweigh its detriments. *In re Prudential Ins. Co. of Am*., 148 S.W.3d 124, 136 (Tex. 2004) (orig. proceeding). A clear failure by the trial court to analyze or apply the law correctly constitutes an abuse of discretion. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). Moreover, mandamus is appropriate to correct "[a]n order compelling discovery that is well outside the proper bounds." *In re Am. Optical Corp*., 988 S.W.2d 711, 713 (Tex. 1998) (orig. proceeding).

III. The Trial Court Abused Its Discretion.

A nonresident defendant may file a special appearance to object to the trial court's jurisdiction on the ground that the defendant "is not amenable to process issued by the courts of this State." Tex. R. Civ. P. 120a(1). The purpose of a special appearance is to allow a nonresident defendant to attack the trial court's jurisdiction over him without subjecting himself to the jurisdiction of the court generally. *C.W. Brown Mach. Shop, Inc. v. Stanley Mach. Corp*., 670 S.W.2d 791, 793 (Tex. App.—Fort Worth 1984, no writ). Rule 120a(3) provides for

discovery "limited to matters directly relevant to the issue" of jurisdiction. *Stanton v. Gloersen*, No. 05-16-00214-CV, 2016 WL 7166550, at *6 (Tex. App.—Dallas Nov. 30, 2016, pet. denied) (mem. op.) (citing *In re Doe*, 444 S.W.3d 603, 608 (Tex. 2014) (orig. proceeding)); *see* Tex. R. Civ. P. 120a(3). A court should not reach the merits of the case when deciding a special appearance. *See Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 791–92 (Tex. 2005).

Here, Cho clearly and unequivocally objected to each of the 116 requests for production on the grounds that they were "not relevant to the jurisdictional facts plead and essential to justify plaintiff's opposition to the special appearance." Rather than consider the merits of those objections, the trial court merely overruled all of Cho's objections, finding that they were "obscured" by "numerous unfounded objections and therefore waived." In effect, the trial court gave GTC carte blanche to engage in full merits-based document discovery despite the pendency of Cho's special appearance. This was a clear abuse of discretion.[2] It is well-settled that Rule 120a requires discovery to be limited to matters relevant to jurisdiction before the trial court rules on a special appearance. *Doe*, 444 S.W.3d at 608; *In re Stanton*, No. 05-17-00834-CV,

[2]GTC relies in part on *Collins v. Kappa Sigma Fraternity*, No. 02-14-00294-CV, 2017 WL 218286 (Tex. App.—Fort Worth Jan. 19, 2017, pet. filed) (mem. op.), in which this court held that the trial court abused its discretion by sustaining the fraternity's boilerplate objections that it failed to support with evidence. *Id.* at 20. That case did not involve a special appearance or the application of Rule 120a. It is therefore inapposite.

2017 WL 3634298, at *1 (Tex. App.—Dallas Aug. 24, 2017, orig. proceeding) (mem. op.); *In re Stern*, 321 S.W.3d 828, 840 (Tex. App.—Houston [1st Dist.] 2010, orig. proceeding) (op. on reh'g).

IV. Conclusion

Having determined that Respondent abused his discretion, we conditionally grant the petition for writ of mandamus. We direct Respondent to vacate his July 26, 2017 "Order Granting Plaintiff's Motion to Compel Jae Man Cho's Compliance with Discovery Obligations" on or before **September 12, 2017**. Because we are confident that Respondent will follow our directive, the writ will issue only if he fails to do so. *See, e.g.*, *In re Gerstner*, No. 02-15-00315-CV, 2015 WL 6444797, at *2 (Tex. App.—Fort Worth Oct. 23, 2015, orig. proceeding) (mem. op.).[3]

[3]We are quite disturbed by the vexatious and belligerent tone present in the parties' multitude of submissions in both this court and the trial court. Such gamesmanship is inappropriate. The parties should have made a better attempt to resolve this matter before involving the trial court or this court. Indeed, this dispute recalls an observation made by the United States District Court for the Northern District of Texas almost 30 years ago:

> [W]e find that valuable judicial and attorney time is consumed in resolving unnecessary contention and sharp practices between lawyers. Judges . . . are required to devote substantial attention to refereeing abusive litigation tactics that range from benign incivility to outright obstruction. Our system of justice can ill-afford to devote scarce resources to supervising matters that do not advance the resolution of the merits of a case; nor can justice long remain available to deserving litigants if the costs of litigation are fueled unnecessarily to the point of being prohibitive.

/s/ Mark T. Pittman
MARK T. PITTMAN
JUSTICE

PANEL: LIVINGSTON, C.J.; SUDDERTH and PITTMAN, JJ.

DELIVERED: September 7, 2017

Dondi Props. Corp. v. Commerce Sav. & Loan Ass'n, 121 F.R.D. 284, 286–87 (N.D. Tex. 1988) (en banc) (requiring attorneys to hold meaningful discussions in an attempt to resolve discovery disputes without court intervention).

During the remaining pendency of this case, the attorneys should be cognizant of their obligations under the Texas Lawyer's Creed. Among other things, as members of the Texas bar, attorneys: (1) "will refrain from excessive and abusive discovery"; (2) "will comply with all reasonable discovery requests"; (3) "will not seek Court intervention to obtain discovery which is clearly improper and not discoverable"; (4) "will not arbitrarily schedule a deposition, Court appearance, or hearing until a good faith effort has been made to schedule it by agreement"; and (5) "will attempt to resolve by agreement . . . objections to matters contained in . . . discovery requests and responses." Texas Lawyer's Creed—A Mandate for Professionalism, *reprinted in* Texas Rules of Court 723–24 (West 2017), *available at* https://www.texasbar.com/AM/Template.cfm?Section=Ethics_Resources&Template=/CM/ContentDisplay.cfm&ContentID=30311 (last viewed Sept. 7, 2017).