



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-10-00035-CV

IN RE:
DR. DAVID CARLISLE, GUARDIAN OF THE PERSON OF HARVEY J. OSBORN AND
BANCORPSOUTH BANK, TEMPORARY GUARDIAN OF
THE ESTATE OF HARVEY J. OSBORN

Original Mandamus Proceeding

Before Morriss, C.J., Carter and Moseley, JJ.
Per Curiam Opinion

OPINION

Dr. David Carlisle, guardian of the person of Harvey J. Osborn, and BancorpSouth Bank, temporary guardian of the estate of Harvey J. Osborn, have filed a petition for writ of mandamus in which they ask this Court to order the judge of the county court at law of Bowie County to rule on their pending motion to name a permanent guardian of the estate.

Briefly, Dr. Osborn was in an automobile accident over a month ago that left him with injuries of such severity that he remains unable to communicate or care for himself in any respect. Shortly before that date, he had filed a petition seeking a divorce, which remains pending. Guardianship proceedings originally commenced in the county court were transferred to the county court at law, and are evidently being addressed in tandem with the divorce proceeding.

We recognize that the appointment of a temporary guardian of the estate expires today. His insurer has informed the parties that it will no longer pay for the expense of his care in the facility in which he currently resides. The parties apparently both acknowledge that he may be properly transferred to a local nursing care facility. However, that facility has informed the parties that it cannot accept the transfer without the appointment of a permanent guardian of the estate.

It appears that the trial court, rather than ruling on the appointment of a permanent guardian of the estate when it appointed a permanent guardian of the person on April 21, 2010, took the matter under advisement. Relators ask us to order the trial court to rule. Further, the real parties

in interest concur that there is a need for appointment of a guardian of the estate that will meet the necessary requirements to qualify for the transfer of Dr. Osborn. Both parties desire the result, although there is no indication as to whether they concur about the identity of such a guardian.

While this Court may not prescribe the manner in which a trial court exercises its discretion, we may, by mandamus, order a trial court to exercise its discretion in some manner. *In re Gill*, 2004 WL 239905 (Tex. App.—Texarkana Feb. 4, 2004, orig. proceeding) (not designated for publication) (citing *Cooke v. Millard*, 854 S.W.2d 134, 135 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding)); *see also Boswell, O’Toole, Davis & Pickering v. Stewart*, 531 S.W.2d 380, 382 (Tex. Civ. App.—Houston [14th Dist.] 1975, orig. proceeding).

We recognize that we have the authority to order a trial judge to rule. However, in this case, the length of time between when the judge took this matter under advisement and this date is quite short.

We conclude that the trial court has not abused its discretion in not yet ruling.¹

We deny the petition.

BY THE COURT

Date Submitted: May 3, 2010
Date Decided: May 3, 2010

¹It is apparent that any further delay will be expensive for both of the parties involved and that both parties desire a swift resolution to this matter. Accordingly, we are confident that the parties are properly motivated to promptly submit to the trial court an agreed order which could be promptly signed by the trial court, naming an entity to serve as the permanent guardian of the estate to avoid further delay and expense to all involved.