



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

No. 06-10-00051-CV

IN RE: MOTOR CAR CLASSICS, LLC, D/B/A
DREAM CAR CLASSICS AND ART WEISS

Original Mandamus Proceeding

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Justice Moseley

MEMORANDUM OPINION

In this original mandamus proceeding, Relators Motor Car Classics, LLC, d/b/a Dream Car Classics (Dream Car) and Art Weiss complain that the respondent trial court abused its discretion when it issued a civil contempt order against Dream Car.¹ This post-trial discovery dispute began with the service of certain post-judgment discovery on Dream Car.² Dream Car made a response to these discovery requests, upon receipt of which Abbott filed a motion to compel which sought “complete production” of documents pursuant to post-judgment discovery. A hearing on the motion to compel evidently took place on February 2, 2010. Thereafter, the trial court entered an order dated February 5, 2010, granting plaintiff’s motion to compel post-judgment discovery. The trial court ordered Dream Car to produce

the originals or true copies of all responsive documents not previously produced to Plaintiff including, without limitation, all records of accounts or related checks, statements as to any inventory, and all documents evidencing any securities, receivables, assets, expenses or liabilities of Weiss and Dream Car on or before February 22, 2010³

Dream Car evidently produced “some additional documentation” in response to this order, but this additional documentation was not sufficient to satisfy Abbott, who filed a motion for civil

¹Real Party in Interest, Ronald E. Abbott, was awarded a final judgment against Dream Car and Weiss by order granting summary judgment dated September 10, 2009.

²While Abbott evidently served like discovery on Weiss, the motion for civil contempt which is the subject of Dream Car’s petition for writ of mandamus was entered only against Dream Car.

³Dream Car complains that this order is vague. However, the record before us does not indicate that Dream Car objected to the language of the order or that it submitted a proposed alternate order.

contempt against Dream Car on April 15, 2010. The motion alleged that Dream Car failed to comply with “significant categories of documents.”

On May 21, 2010, Dream Car filed its response to the motion for civil contempt alleging, among other things, that the categories of documents Abbott represented were not produced were not a part of the previous order compelling post-judgment discovery. Dream Car attached an affidavit⁴ to its response, alleging that Dream Car sent counsel for Abbott two separate “stacks” of documents with cover letters, which documents

appear to be, among other things, bank statements, checks, records of accounts with related checks, statements as to inventory sold and the sale prices, documents evidencing that Dream Cars’ assets are pledged to several banks, loan documents, receivables, assets, expenses, or liabilities.

(Emphasis added.)

Also on May 21, 2010, the trial court heard Abbott’s motion for civil contempt, and thereafter issued an order granting that motion on June 10, 2010. The order (1) listed twelve categories of documents Dream Car was to produce within seven days of the date of the order; (2) ordered that if Dream Car failed to produce the documents within that period, it would be sanctioned the sum of \$1,000.00 per day until the documents were produced; and (3) ordered Dream Car to pay \$2,500.00 in reasonable attorney’s fees as a further sanction.⁵ In this original

⁴The affidavit, dated May 21, 2010, under a Florida notary seal, was signed by Robert L. Chapman, a Florida attorney representing Dream Car.

⁵In response to the civil contempt order, Dream Car produced additional documents via letter dated June 9, 2010. Counsel for Abbott represents to this Court that the trial court has not determined whether Dream Car made a complete

proceeding, Dream Car asks this Court to (1) vacate the civil contempt order in its entirety; (2) prevent further orders or sanctions by the respondent trial court relating to the civil contempt order, upon further orders of this Court; (3) issue an order requiring the identification of what discovery must be provided and the provision of a reasonable time in which relators must comply; and (4) determine that Weiss is not subject to the April 15, 2010, motion for civil contempt.

Mandamus is an extraordinary remedy that will issue only to correct a clear abuse of discretion, or, in the absence of another statutory remedy, when the trial court fails to observe a mandatory statutory provision conferring a right or forbidding a particular action. *In re Team Rocket, L.P.*, 256 S.W.3d 257 (Tex. 2008) (orig. proceeding); *In re Nitla S.A. de C.V.*, 92 S.W.3d 419, 422 (Tex. 2002) (orig. proceeding). When the trial court's action is mandatory, mandamus is the appropriate remedy to compel the performance of the ministerial act. *In re Perritt*, 992 S.W.2d 444, 447 (Tex. 1999) (orig. proceeding). A petition for writ of mandamus is also the proper way to seek review, as in this case, of a trial court's post-judgment discovery order. *Bielamowicz v. Cedar Hill Indep. Sch. Dist.*, 136 S.W.3d 718, 723 (Tex. App.—Dallas 2004, pet. denied & orig. proceeding); *In re Amaya*, 34 S.W.3d 354, 356 (Tex. App.—Waco 2001, orig. proceeding).

production in response to the civil contempt order, and whether any additional sanctions will be awarded for any failure to produce documents within seven days of the civil contempt order.

While review by appeal typically involves submission of the appellate record to the appellate court,⁶ in an original mandamus proceeding, it is the responsibility of the relator to submit with the petition seeking the extraordinary relief an appendix containing a sworn copy of any order complained of, or any other document showing the matter complained of. TEX. R. APP. P. 52.1, 52.3(k)(1)(A). The petition must also be accompanied by a certified or sworn copy of every document that is material to the relator's claim for relief and that was filed in any underlying proceeding. TEX. R. APP. P. 52.7(a)(1). It is the burden of a relator seeking issuance of a writ of mandamus to provide a record sufficient to establish the relator's right to mandamus relief. *See Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding).

This case involves a civil contempt order issued against Dream Car as a result of Dream Car's failure to comply with an order compelling discovery. The record before us does not include information we believe to be vital to an evaluation of the merits of the petition. The record fails to include (1) the discovery propounded on Dream Car which underlies the post-judgment discovery orders; (2) responses made by Dream Car to the post-judgment discovery in issue; (3) a record of the hearing on Abbott's motion to compel discovery on February 2, 2010; and (4) a record of the hearing on Abbott's motion for civil contempt on May 15, 2010.

A mandamus action requires certainty as to both pleadings and facts. *Johnson v. Hughes*, 663 S.W.2d 11, 12 (Tex. App.—Houston [1st Dist.] 1983, orig. proceeding). If relator's right to

⁶TEX. R. APP. P. 34.

mandamus rests on doubtful or disputed facts, mandamus will not issue. *West v. Solito*, 563 S.W.2d 240, 245 (Tex. 1978) (orig. proceeding). Here, the incomplete record precludes the type of certainty that would permit us to determine whether the trial court clearly abused its discretion in entering the order granting the motion for civil contempt. Accordingly, Relators' petition for writ of mandamus is denied. *See* TEX. R. APP. P. 52.8(a).

Bailey C. Moseley
Justice

Date Submitted: July 14, 2010
Date Decided: July 15, 2010