



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

No. 06-16-00012-CV

IN RE: CARL STORCK AND VICKI STORCK

Original Mandamus Proceeding

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

MEMORANDUM OPINION

This petition for mandamus relief filed by Carl and Vicki Storck (the Storcks) represents the latest chapter revealed to this Court in an ongoing dispute between the Storcks and the Tres Lagos Property Owners' Association, Inc. (the Association).¹ In a previous lawsuit in the 62nd Judicial District Court of Franklin County, the Association was awarded a money judgment (including an award of attorney fees) against the Storcks in the sum of \$13,588.70. Preparatory to appeal of that judgment, the Storcks deposited a cash supersedeas bond into the registry of the court.

In a subsequent separate court proceeding in that same trial court, the Storcks successfully challenged the actions of the Association on the basis of irregularities in the elections of several of the members of its governing board. Consequently, the Storcks moved to have the supersedeas bond pertaining to the original lawsuit released so the proceeds could be returned. The Association filed a release of the judgment against the Storcks. The Association's counsel during its initial legal dispute with the Storcks filed a post-judgment petition to intervene, asking the court to set aside the Association's release of judgment and to release the Storcks' cash bond to him as partial payment of the attorney fees awarded in the judgment against the Storcks.² After a hearing, the trial court granted the attorney's post-judgment intervention, set aside the release of judgment

¹*In re Storck*, No. 06-12-00073-CV, 2012 Tex. App. LEXIS 6478 (Tex. App.—Texarkana Aug. 7, 2012, orig. proceeding) (mem. op., not designated for publication); *see Storck v. Tres Lagos Prop. Owners Ass'n*, 442 S.W.3d 730 (Tex. App.—Texarkana, 2014, pet. denied); *Divin v. Tres Lagos Prop. Owners' Ass'n*, No. 06-13-00124-CV, 2014 Tex. App. LEXIS 8587 (Tex. App.—Texarkana Aug. 7, 2014, pet. denied) (mem. op., not designated for publication).

²The judgment awarded attorney fees to the Association, not the attorney representing it at that time.

given by the Association's board, and ordered the proceeds of the cash bond to be released to the attorney. The Storcks filed a petition for writ of mandamus, seeking to have this Court "set aside" the order, alleging that the Association's attorney at the first trial failed to meet the requirements necessary for post-judgment intervention.

As an extraordinary remedy, mandamus issues only when the record shows (1) a clear abuse of discretion by the trial court or the failure of the trial court to perform a ministerial act or duty, and (2) the absence of an adequate remedy at law. *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding); *In re Ingram*, 433 S.W.3d 769, 771 (Tex. App.—Texarkana 2014, orig. proceeding). It is the relator's burden to provide this Court with a record sufficient to establish the existence of a right to mandamus relief. *Walker*, 827 S.W.2d at 837; *In re Pilgrim's Pride Corp.*, 187 S.W.3d 197, 198–99 (Tex. App.—Texarkana 2006, orig. proceeding); see TEX. R. APP. P. 52.3, 52.7(a).

In response to the trial court's order, the Storcks filed a motion for new trial and a notice of appeal alleging, in part, that the judgment should be set aside because the evidence supporting the order was legally and factually insufficient. A related direct appeal from the order is pending before this Court under cause number 06-16-00001-CV, styled *Carl Storck & Vicki Storck v. Tres Lagos Property Owners' Association*. A writ of mandamus is not a substitute for an appeal and is not a proper vehicle for the relief sought by the Storcks. See *Walker*, 827 S.W.2d at 840–41. The

Storcks' petition fails to allege (and the record before us fails to demonstrate) the absence of an adequate remedy at law. Accordingly, we deny the Storcks' petition for writ of mandamus.

Bailey C. Moseley
Justice

Date Submitted: March 10, 2016
Date Decided: March 11, 2016