NUMBER 13-17-00306-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

**IN RE GERMAN TREVINO CERVANTES
AND JOSE LOREDO GARZA**

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

Before Justices Rodriguez, Contreras, and Benavides
Memorandum Opinion by Justice Benavides[1]

By petition for writ of mandamus filed on June 15, 2017, relators German Trevino Cervantes and Jose Loredo Garza contend that the trial court abused its discretion by: (1) allowing a case to proceed to trial without having an allocation and approval of the minors' settlement proceeds where the plaintiffs and co-defendant have reached an enforceable settlement agreement; and (2) failing to rule on and grant relators' motion to

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[1] *See* TEX. R. APP. P. 52.8(d) ("When granting relief, the court must hand down an opinion as in any other case," but when "denying relief, the court may hand down an opinion but is not required to do so."); *Id.* R. 47.4 (distinguishing opinions and memorandum opinions).

compel the production of finalized settlement documents. According to the petition, real parties in interest, Sandra Tovar Smith as next friend of Cn.T., M.T., and Cb.T., minor children, and Hector and Graciela Perez, brought suit against relators and Marcos Antonio Tovar for personal injuries and wrongful death arising from a vehicular accident. The real parties have reached a settlement with Tovar, but not relators. Relators seek to compel the trial court to "stay the current trial proceedings, and order [the real parties to produce] a finalized version of the settlement agreement, with allocations between Plaintiffs and the settling Defendant with adequate time before the next trial setting." Relators have also filed an opposed emergency motion for temporary relief seeking to stay the trial court proceedings, including the current trial date of June 19, 2017. The Court has also received and reviewed a response from the real parties in interest to the relators' petition for writ of mandamus and their request for temporary relief. The real parties have also filed an opposed motion to submit a second supplemental mandamus record under seal. The real parties allege, inter alia, that they have offered to provide the relators with a copy of the confidential settlement agreement containing the global settlement amount, and other provisions relevant to the relators' concerns, subject to a protective order.

Mandamus is an extraordinary remedy. *In re H.E.B. Grocery Co.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam). Mandamus relief is proper to correct a clear abuse of discretion when there is no adequate remedy by appeal. *In re Christus Santa Rosa Health Sys.*, 492 S.W.3d 276, 279 (Tex. 2016) (orig. proceeding). The relator bears the burden of proving both of these requirements. *In re H.E.B. Grocery Co.*, 492 S.W.3d at 302; *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding).

An abuse of discretion occurs when a trial court's ruling is arbitrary and unreasonable or is made without regard for guiding legal principles or supporting evidence. *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding); *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012). We determine the adequacy of an appellate remedy by balancing the benefits of mandamus review against the detriments. *In re Essex Ins. Co.*, 450 S.W.3d 524, 528 (Tex. 2014) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004) (orig. proceeding).[2]

Texas law strongly favors and encourages voluntary settlement and orderly dispute resolution. *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 333 (Tex. 2011); *Forest Oil Corp. v. McAllen*, 268 S.W.3d 51, 60 (Tex. 2008); *Schlumberger Tech. Corp. v. Swanson*, 959 S.W.2d 171, 178 (Tex. 1997); *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 154.002 (West, Westlaw through Ch. 49, 2017 R.S.) ("It is the policy of this state to encourage the peaceable resolution of disputes . . . and the early settlement of pending litigation through voluntary settlement procedures."). Further, it is the responsibility of all trial and appellate courts and their court administrators to carry out this state's policy to encourage the peaceable resolution of disputes. TEX. CIV. PRAC. & REM. CODE ANN. § 154.003 (West, Westlaw through Ch. 49, 2017 R.S.); *see In re Caballero*, 441 S.W.3d 562, 575 (Tex. App.—El Paso 2014, orig. proceeding). In this regard, the trial court has broad discretion to manage and control its docket to promote the efficient administration of justice and the expeditious resolution of disputes. *See In*

[2] The relator has the burden to provide a record that is sufficient to establish the entitlement to mandamus relief. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding) (stating that it is the relator's burden to provide a record sufficient to establish the entitlement to mandamus relief); *In re Le*, 335 S.W.3d 808, 813 (Tex. App.—Houston [14th Dist.] 2011, orig. proceeding) (stating that "[t]hose seeking the extraordinary remedy of mandamus must follow the applicable procedural rules," and "[c]hief among these is the critical obligation to provide the reviewing court with a complete and adequate record"). Here, the record provided by the real parties in interest establishes that the relators failed to meet this requirement.

re City of Dallas, 445 S.W.3d 456, 463 (Tex. App.—Dallas 2014, orig. proceeding); *Bagwell v. Ridge at Alta Vista Invs. I, L.L.C.*, 440 S.W.3d 287, 292 (Tex. App.—Dallas 2014, pet. denied).

The relators here have not directed us to any rule, statute, or opinion which requires settlements to be finalized and the settlement proceeds to be allocated among the parties prior to the beginning of a trial. Many cases are settled on the courthouse steps immediately prior to trial, notwithstanding earlier unsuccessful settlement attempts, or even during trial when trial preparation or the progress of the trial itself has changed the parties' perception of the case. A rule requiring settlement documents and the allocation of settlement proceeds to be finalized and disclosed prior to the trial of a case would frustrate the policy of this state favoring the voluntary resolution of cases and impinge on the trial court's discretion to manage its docket. Moreover, relators are essentially seeking to compel the real parties to create and produce documents that are not yet in existence. It is well-settled that a party cannot be forced to create documents that do not exist for the purpose of complying with a request for production. *In re Jacobs*, 300 S.W.3d 35, 46–47 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding). Ultimately, under the facts shown here, relators have not shown that the trial court abused its discretion in refusing to continue the second trial setting for this case or in failing to compel the creation and production of finalized settlement documents.

Further, to the extent that relators contend that the real parties' failure to finalize the allocation of the settlement proceeds prior to trial in this case is somehow irregular, or in some way prejudices the relators' ability to obtain a settlement credit, or otherwise violates the "one satisfaction rule," we note that relators have an adequate remedy by

appeal. *See, e.g.*, *Utts v. Short*, 81 S.W.3d 822, 829 (Tex. 2002) (reviewing the application of settlement credits on appeal); *Stewart Title Guar. Co. v. Sterling*, 822 S.W.2d 1, 7 (Tex. 1991) (reviewing the application of the "one satisfaction rule" on appeal). The relators have not shown why the trial court's failure to order the production of the settlement allocation information prior to the beginning of trial affects or prejudices their substantial rights. *See In re Van Waters & Rogers, Inc.*, 145 S.W.3d 203, 211 (Tex. 2004) (orig. proceeding).

As an intermediate appellate court, we defer to the Texas Supreme Court to decide when, if ever, and under what circumstances the relators' contentions might become sustainable on mandamus review. *See, e.g.*, *W.W. Webber, L.L.C. v. Harris Cnty. Toll Rd. Auth.*, 324 S.W.3d 877, 883 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (stating that intermediate appellate courts defer to the Texas Supreme Court to decide when legal theories become sustainable.); *Burroughs v. APS Int'l, Ltd.*, 93 S.W.3d 155, 161 (Tex. App.—Houston [14th Dist.] 2002, pet. denied) (stating that intermediate appellate courts will not create new causes of action); *Petco Animal Supplies, Inc. v. Schuster*, 144 S.W.3d 554, 565 (Tex. App.—Austin 2004, no pet.) ("As an intermediate appellate court, we are not free to mold Texas law as we see fit but must instead follow the precedents of the Texas Supreme Court unless and until the highest court overrules them or the Texas Legislature supersedes them by statute.").

The Court, having examined and fully considered the petition for writ of mandamus and the applicable law, is of the opinion that relators have not shown themselves entitled to the relief sought. Accordingly, we DENY the petition for writ of mandamus and the opposed emergency motion for temporary relief. *See* TEX. R. APP. P. 52.8(a). Given our

disposition of this original proceeding, we DISMSS as moot the real parties' opposed motion to submit a second supplemental mandamus record under seal, and any documents that real parties provide to this Court in the form of a second supplemental mandamus record will not be filed and will be returned to the real parties.

GINA M. BENAVIDES
Justice

Delivered and filed this
16th day of June, 2017.