



NUMBER 13-17-00328-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE HOWARD ROBERTS

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Longoria and Hinojosa
Memorandum Opinion by Chief Justice Valdez¹**

Relator Howard Roberts filed a petition for writ of mandamus in the above cause on June 22, 2017. Through this original proceeding, relator seeks to compel the trial court to set aside an oral ruling rendered on June 5, 2017 regarding the admissibility of evidence at trial. Relator alleges that the trial court's ruling conflicts with an agreement entered by the parties with regard to medical treatment and medical bills incurred by the real party in interest, James W. Pace Jr. Roberts specifically argues:

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."); TEX. R. APP. P. 47.4 (distinguishing opinions and memorandum opinions).

On November 28, 2016, counsel for plaintiff and counsel for defendant entered into an agreement under TEX. R. CIV. P. 11 and 191.1. The agreement was recited in open court and entered of record. The parties agreed there would be no new discovery, pleading amendments, witnesses and medical charges or records produced or filed in the case. On the eve of trial, the trial court refused to enforce that Rule 11 and Rule 191.1 agreement and ruled that plaintiff could adduce oral, but not written, evidence of additional medical treatment and charges incurred in March and April 2017.

Did the trial court abuse its discretion by refusing to enforce the parties' valid Rule 11 and Rule 191.1 agreement?

This Court requested and received a response to the petition from Pace. See TEX. R. APP. P. 52.2, 52.4, 52.8. Pace asserts, inter alia, that: (1) courts have wide discretion in setting and modifying deadlines when trial settings are changed, as they have in this case from the February 2017 trial date under discussion in the oral agreement at issue here to the current trial setting of October 2017; (2) the alleged Rule 11 agreement fails because there was no meeting of the minds and no consideration; (3) the evidence is admissible under Texas Rule of Civil Procedure 193.6 because there is good cause and Roberts will not suffer unfair surprise or prejudice; and (4) the future admission of evidence is subject to appeal and therefore, not appropriate for mandamus. By reply, Roberts contends that Pace's arguments lack merit.

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).

The Court, applying the foregoing principles to the case at hand, and having examined and fully considered the petition for writ of mandamus, the response, and the reply, is of the opinion that relator has not shown himself entitled to the relief sought. See *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 136. Accordingly, we DENY the petition for writ of mandamus. See TEX. R. APP. P. 52.8(a).

/s/ Rogelio Valdez
ROGELIO VALDEZ
Chief Justice

Delivered and filed this
31st day of August, 2017.