



NUMBER 13-17-00521-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

**IN RE VCC, LLC, VRATSINAS CONSTRUCTION CO.,
NATO GARCIA D/B/A NATO GARCIA COMPANY,
AND P.H.I. SERVICE AGENCY, INC.**

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Contreras and Hinojosa
Memorandum Opinion by Justice Hinojosa¹**

On September 22, 2017 relators VCC, LLC, Vratsinas Construction Co., Nato Garcia d/b/a Nato Garcia Company, and P.H.I. Service Agency, Inc. filed a petition for writ of mandamus seeking to compel the trial court to (1) vacate its September 18, 2017 oral rulings denying relators' motions for continuance due to Hurricane Harvey, (2)

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

continue the trial setting to a date substantially beyond the February 5, 2018 “back-up” trial date, and (3) issue a new scheduling order. This Court requested and received a response to the petition for writ of mandamus from the real party in interest, Pharr-San Juan-Alamo Independent School District. We have further received a reply to the response and letter briefs from relators. According to relators, the trial court has now continued the trial setting until November 28, 2017 and has instructed the parties to confer on new pretrial deadlines. Relators contend that mandamus relief is still warranted under the facts of this case.

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).

When reviewing a trial court's order denying a motion for continuance, we consider whether the trial court committed a clear abuse of discretion on a case-by-case basis.

Joe v. Two Thirty Nine Joint Venture, 145 S.W.3d 150, 161 (Tex. 2004). We consider the following nonexclusive factors when deciding whether a trial court abused its discretion in denying a motion for continuance seeking additional time to conduct discovery: the length of time the case has been on file, the materiality and purpose of the discovery sought, and whether the party seeking the continuance has exercised due diligence to obtain the discovery sought. See *id.* Generally, the denial of a motion for continuance is an incidental trial ruling that is ordinarily not reviewable by mandamus. See *In re Allied Chem. Corp.*, 227 S.W.3d 652, 658 (Tex. 2007) (orig. proceeding); *Gen. Motors Corp. v. Gayle*, 951 S.W.2d 469, 477 (Tex. 1997) (orig. proceeding). Nevertheless, under extraordinary circumstances, a trial court may abuse its discretion by refusing to grant a continuance. See *Gen. Motors Corp. v. Gayle*, 951 S.W.2d 469, 477 (Tex. 1997) (orig. proceeding). For instance, mandamus may be appropriate if a defendant has been denied a reasonable opportunity to develop the merits of its defense, see *Gen. Motors Corp. v. Tanner*, 892 S.W.2d 862, 863 (Tex. 1995) (per curiam) (orig. proceeding), or where the trial court disallows discovery that cannot be made a part of the appellate record, effectively precluding review of the trial court's error. *Walker*, 827 S.W.2d at 843.

A motion for continuance may not be granted “except for sufficient cause supported by affidavit, or by consent of the parties, or by operation of law.” TEX. R. CIV. P. 251; see *id.* R. 252 (stating that an applicant for a continuance based on the need for additional discovery must meet certain requirements, including, inter alia, showing that the discovery is material and cannot be obtained from any other source). In this regard, the Texas Supreme Court has explicitly ordered that “all courts in Texas should consider disaster-caused delays as good cause for modifying or suspending all deadlines and

procedures—whether prescribed by statute, rule, or order—in any case, civil or criminal.” See Supreme Court of Texas, *Emergency Order Authorizing Modification and Suspension of Court Procedures in Proceedings Affected by Disaster*, Misc. Docket No. 17–9091 (August 28, 2017); see TEX. GOV'T CODE ANN. § 22.0035 (West, Westlaw through 2017 R.S. & F.C.S).

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, the reply, and the letter briefs, is of the opinion that relators have not shown themselves entitled to the relief sought at this time. See *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 136. Specifically, in light of the brief continuance that was recently granted, relators have failed to specify to us, and perhaps to the trial court, what additional discovery is required, how the discovery may implicate any pleaded claims or defenses, and how much time, if any, is necessary to prepare for trial after the close of a discovery period that has yet to be defined. We are confident that the trial court will carefully balance these concerns as well as those articulated in *Allied Chem. Corp.*, 227 S.W.3d at 658. Accordingly, we DENY relators' emergency motion for temporary relief to the extent that it was previously carried with the case, and we DENY this original proceeding without prejudice. See TEX. R. APP. P. 52.8(a).

LETICIA HINOJOSA
Justice

Delivered and filed the
28th day of September, 2017.