

NO. 12-12-00054-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN RE: SAFECO LLOYDS

§

INSURANCE COMPANY,

§

ORIGINAL PROCEEDING

RELATOR

§

MEMORANDUM OPINION

Relator Safeco Lloyds Insurance Company requests a writ of mandamus directing the Honorable J. Clay Gossett, Judge of the 4th Judicial District Court, Rusk County, Texas, to dismiss the underlying proceeding. We deny the petition.

BACKGROUND

The real party in interest, Debbie King, sued a motorist for damages resulting from personal injuries she incurred in a car accident that she asserted was caused by the motorist's negligence. King also sued Safeco, her insurer, seeking underinsured motorist (UIM) benefits pursuant to the UIM provision in her automobile policy. She alleged both breach of contract and bad faith claims against Safeco. The trial court severed and abated the bad faith claims pending resolution of the contract claims.

Ultimately, King settled her contract claims with Safeco. The compromise and settlement agreement signed by King and Safeco expressly provides that King's "extra-contractual claims will be unaffected by this settlement agreement." The trial court signed an order vacating its order of abatement and authorizing King to proceed with discovery and trial preparation on the remaining claims. The trial court also signed an order dismissing King's contract claims and providing that "[t]his order shall have no effect on [King's] extra-contractual claims; such claims shall remain pending until resolved via settlement or trial."

Safeco filed a plea to the jurisdiction asserting that the trial court lost jurisdiction of the bad faith claims because, due to King's settlement of the contract claims, she would be unable to establish her legal entitlement to damages. Safeco argued further that because a determination of King's legal entitlement to damages is a condition precedent to Safeco's duty to pay benefits under the UIM provision, King could not establish that Safeco breached its contract and therefore could not prevail on her bad faith claims. After a hearing, the trial court denied Safeco's plea to the jurisdiction. Safeco then filed a petition for writ of mandamus and a motion for emergency relief from the trial court's order.

PREREQUISITES TO MANDAMUS

A writ of mandamus will issue only if the trial court has committed a clear abuse of discretion and the relator has no adequate remedy by appeal. *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005) (orig. proceeding). A clear abuse of discretion occurs when an action is so arbitrary and unreasonable as to amount to a clear and prejudicial error of law. *In re CSX, Corp.*, 124 S.W.3d 149, 151 (Tex. 2003) (orig. proceeding). A trial court abuses its discretion if it acts without reference to any guiding rules and principles or in an arbitrary or unreasonable manner. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985).

STANDING

Standing is a party's justiciable interest in a controversy and is a component of subject matter jurisdiction. *Nootsie, Ltd. v. Williamson Cnty. Appraisal Dist.*, 925 S.W.3d 659, 661-62 (Tex. 1996). Standing focuses on the question of who may bring an action and is determined at the time suit is filed in the trial court. *M.D. Anderson Cancer Ctr. v. Novak*, 52 S.W.3d 704, 708 (Tex. 2001); *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 n.9 (Tex. 1993). To have standing, the plaintiff must be personally aggrieved; her alleged injury must be concrete and particularized, actual or imminent, not hypothetical. *Brown v. Todd*, 53 S.W.3d 297, 305 (Tex. 2001). A plaintiff does not lack standing simply because she cannot prevail on the merits of her claim. *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 305 (Tex. 2008). A court has no jurisdiction over a claim made by a plaintiff without standing to assert it. *Id.* at 304.

Here, Safeco does not contend that King lacked standing when she filed her suit. Instead, it argues in essence that a subsequent event—King’s settlement of her contract claims—has rendered King unable to prevail on the merits of her bad faith claims. Thus, Safeco urges, King no longer has standing to pursue her bad faith claims and, consequently, the trial court no longer has subject matter jurisdiction over those claims. But as we have previously stated, standing is determined at the time suit is filed. *M.D. Anderson Cancer Ctr.*, 52 S.W.3d at 708; *Tex. Ass’n of Bus.*, 852 S.W.2d at 446 n.9. Subsequent events do not deprive a plaintiff of standing. *See Tex. Ass’n of Bus.*, 852 S.W.2d at 446 n.9. *Id.* Because King had standing when she filed suit, her standing to pursue her bad faith claims is unaffected by her settlement of her contract claims against Safeco. *See id.*

CONCLUSION

Because King’s settlement of her contract claims did not affect her standing to pursue her bad faith claims, the trial court did not lose jurisdiction of King’s bad faith claims. Consequently, Safeco has not shown that the trial court abused its discretion in denying its plea to the jurisdiction. Because Safeco has not shown an abuse of discretion by the trial court, it has not met the first prerequisite to mandamus. Accordingly, we *deny* Safeco’s petition for writ of mandamus and *dismiss* its motion for emergency relief as moot.

SAM GRIFFITH
Justice

Opinion delivered February 8, 2012.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)



**COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT**

FEBRUARY 8, 2012

NO. 12-11-00056-CV

SAFECO LLOYDS INSURANCE COMPANY,
Relator
v.
HON. J. CLAY GOSSETT,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by **SAFECO LLOYDS INSURANCE COMPANY**, who is the relator in Cause No. 2006-460A, pending on the docket of the 4th Judicial District Court of Rusk County, Texas. Said petition for writ of mandamus having been filed herein on January 31, 2012, and the same having been duly considered, because it is the opinion of this Court that writ of mandamus should not issue, it is therefore **CONSIDERED, ADJUDGED and ORDERED** that the said petition for writ of mandamus be, and the same is, hereby **DENIED**. Safeco's motion for emergency relief is dismissed as moot.

Sam Griffith, Justice.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.