NO. 12-12-00121-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN RE:	§	
MICHAEL BRADBERRY,	§	***ORIGINAL PROCEEDING***
RELATOR	§	

MEMORANDUM OPINION

In this pro se original mandamus proceeding, Relator Michael Bradberry, a defendant in the underlying civil action, asserts that the trial court, without authority, granted a partial summary judgment against Bradberry in favor of another defendant. He also complains that he filed a number of pretrial motions, but the trial court failed to rule on them. He requests a writ of mandamus directing the trial court to vacate the order granting the partial summary judgment and to rule on Bradberry's pretrial motions. We deny the petition.

PREREQUISITES TO MANDAMUS

A writ of mandamus will issue to correct a clear abuse of discretion when there is no adequate remedy by appeal. ***In re Prudential Ins. Co. of Am.***, 148 S.W.3d 124, 135-36 (Tex. 2004) (orig. proceeding); ***Walker v. Packer***, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding). A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law or if it clearly fails to correctly analyze or apply the law. ***Walker***, 827 S.W.2d at 839-40. The relator has the burden to establish an abuse of discretion as well as the inadequacy of a remedy by appeal. ***Canadian Helicopters Ltd. v. Wittig***, 876 S.W.2d 304, 305 (Tex. 1994) (orig. proceeding); ***In re E. Tex. Med. Ctr. Athens***, 154 S.W.3d 933, 935 (Tex. App.–Tyler 2005, orig. proceeding). For the reasons set forth below, we conclude that Bradberry has an adequate remedy by appeal. Therefore, we need

not address whether Bradberry has shown that the trial court abused its discretion. *See* TEX. R. APP. P. 47.1.

ADEQUATE REMEDY BY APPEAL

Bradberry insists that appeal is an inadequate remedy in this case. He argues that a trial court has no discretion to incorrectly determine matters of law or to apply the law to the facts incorrectly. He urges that the trial court had no authority to grant the partial summary judgment against him, and therefore the order is void. Thus, in essence, he contends that he is not required to establish the inadequacy of his appellate remedy.

A judgment is void only in "rare circumstances." ***Mapco, Inc. v. Forrest***, 795 S.W.2d 700, 703 (Tex. 1990). More specifically, a judgment is void only when it is apparent that the court rendering the judgment had (1) no jurisdiction of the parties, (2) no jurisdiction of the subject matter, (3) no jurisdiction to enter the judgment, or (4) no capacity to act as a court. ***Id***. Bradberry argues that "the error committed in this cause is the treatment of previous findings of fact and conclusions of law in the original action between [all parties]." He asserts further that an amended pleading was filed prior to the granting of the partial summary judgment, and thE pleading omitted his name as a defendant. Therefore, he urges, he was dismissed from the lawsuit and no judgment could be taken against him. His complaint about the findings of fact and conclusions of law does not challenge the trial court's jurisdiction. *See* ***id***. Furthermore, we are unable to conclude from the record that Bradberry was dismissed as a defendant. Consequently, Bradberry has not shown that the trial court's order granting partial summary judgment is void. Therefore, to show his entitlement to mandamus relief, he must show that he has no adequate remedy by appeal.

A partial summary judgment that does not dispose of all parties and issues in the suit is interlocutory and not appealable unless it falls within an exception created by statute or other law. *See* **Lehmann v. Har-Con Corp.**, 39 S.W.3d 191, 195 (Tex. 2001). If, as here, no exception makes the partial summary judgment appealable and there has been no severance, the party against whom an interlocutory summary judgment has been rendered has his right of appeal only when the partial summary judgment is merged in a final judgment disposing of all parties and issues. ***Id***.; ***City of Beaumont v. Guillory***, 751 S.W.2d 491, 492 (Tex. 1988).

Here, Bradberry acknowledges that a partial summary judgment is interlocutory until the final judgment is signed. He also acknowledges that a final judgment has been signed in the underlying action.[1] The partial summary judgment became appealable when the final judgment was signed. ***Lehmann***, 39 S.W.3d at 195; ***Guillory***, 751 S.W.2d at 492. Moreover, the trial court's signing of a final judgment constitutes an implicit denial of Bradberry's pending pretrial motions. *See, e.g.,* ***Bramlett v. Phillips***, 359 S.W.3d 304, 309 (Tex. App.–Amarillo 2012, no pet.) (rendering final judgment was implicit denial of the appellants' attempt to add additional parties). The denial of these motions became appealable on final judgment. *See* ***Lehmann***, 39 S.W.3d at 195.

In summary, the order granting the partial summary judgment against Bradberry and the implicit denial of Bradberry's pretrial motions are appealable because there is a final judgment in the underlying proceeding. Therefore, Bradberry has not established that appeal is an inadequate remedy in this case. Accordingly, his petition for writ of mandamus is ***denied***.

BRIAN HOYLE
Justice

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

(PUBLISH)

[1] Bradberry's appeal from the final judgment is pending in this court under appellate cause number 12-12-00098-CV.

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

AUGUST 8, 2012

NO. 12-12-00121-CV

MICHAEL BRADBERRY,
Relator
v.
HON. BASCOM W. BENTLEY, III,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by **MICHAEL BRADBERRY**, who is the relator in Cause No. 2010-07-0479, pending on the docket of the 369th Judicial District Court of Cherokee County, Texas. Said petition for writ of mandamus having been filed herein on April 2, 2012, and the same having been duly considered, because it is the opinion of this Court that a 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**.

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