NO. 12-12-00162-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

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

MEMORANDUM OPINION

Relator Michael Bradberry seeks a writ of mandamus directing the trial court to vacate its turnover order granted on the application of Noel Bridges and Robert Bridges, judgment creditors. We deny the petition.

BACKGROUND

Noel Bridges and Robert Bridges, defendants in the underlying action, filed an application for a turnover order against Bradberry. They alleged in their application that they recovered a judgment against Bradberry on February 6, 2012, in the amount of $1,195,021.00. They alleged further that the judgment was unsatisfied. The requested turnover order pertained to certain mineral interests Bradberry owns, his corresponding right to any future payments associated with production from the minerals, and all documents related to that property. The trial court granted the application.

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

A judgment creditor is entitled to assistance from a court of appropriate jurisdiction to reach property to obtain satisfaction of a judgment. TEX. CIV. PRAC. & REM. CODE ANN. § 31.002(a) (West 2008). A turnover order is one means of providing such assistance. *See* ***id***. § 31.002(b) (West 2008). As a general rule, turnover orders are final, appealable orders. ***Burns v. Miller, Hiersche, Martens & Hayward, P.C.***, 909 S.W.2d 505, 506 (Tex. 1995). As such, turnover orders must be attacked on direct appeal. ***Davis v. West***, 317 S.W.3d 301, 309 (Tex. App.–Houston [1st Dist.] 2009, no pet.). Bradberry contends, however, that he need not show that appeal is an inadequate remedy here because the turnover order issued by the trial court is void. Specifically, he asserts that because the judgment in the underlying cause has been appealed, there is no final judgment in the case, and therefore issuance of the turnover order was premature. We disagree.

A judgment creditor has a statutory right to have execution issued to enforce a judgment pending appeal, unless and until a valid supersedeas bond has been filed. ***Tex. Emp's Ass'n v. Engelke***, 790 S.W.2d 93, 95 (Tex. App.–Houston [1st Dist.] 1990, orig. proceeding [leave to file mandamus denied]); ***Anderson v. Lykes***, 761 S.W.2d 831, 833 (Tex. App.–Dallas 1988, no writ); *see also* TEX. R. CIV. P. 627. Thus, the pendency of an appeal does not suspend the judgment creditor's right to seek the aid of the court under the turnover provisions of Section 31.002 unless the judgment is superseded. ***Anderson***, 761 S.W.2d at 834. In the instant case, Bradberry did not supersede the judgment. And he does not contend that the judgment fails to dispose of all parties and issues in the case. *See* ***Lehmann v. Har-Con Corp.***, 39 S.W.3d 191, 195 (Tex.

2001). Therefore, the turnover order is not void and must be challenged by direct appeal. *See* ***Davis***, 317 S.W.3d at 309; ***Anderson***, 761 S.W.2d at 834.

Nevertheless, Bradberry cites three cases that he contends support his argument. In the first case, the court held that a judgment nunc pro tunc, issued after the final judgment in the case, was void because it sought to correct a judicial error rather than a clerical error. ***Dikeman v. Snell***, 490 S.W.2d 183, 186 (Tex. 1983). In the second, the court noted that the turnover statute was designed to assist judgment creditors in securing satisfaction of a final judgment. ***Ex parte Johnson***, 654 S.W.2d 415, 417 (Tex. 1983) (orig. proceeding). But the court was not asked to address whether the judgment in the case was final and did not hold that a turnover order is available only after all appeals are final. *See* ***id.*** In the third case, the court held that the turnover order was issued prematurely because the default judgment did not dispose of all parties and issues. ***In re Bro Bro Props., Inc.***, 50 S.W.3d 528, 530 (Tex. App.–San Antonio 2000, orig. proceeding [mandamus denied]). This case does not support a conclusion that a judgment is not final until all appeals have been completed. *See* ***id***. In fact, as we have discussed above, the law is to the contrary. Therefore, the cases Bradberry cites are inapposite, and he has not shown that appeal is an inadequate remedy for challenging the turnover order.

Bradberry's petition for writ of mandamus is ***denied***.

JAMES T. WORTHEN
Chief Justice

Opinion delivered August 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

AUGUST 8, 2012

NO. 12-12-00162-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 **MICHEL 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 May 3, 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**.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.