NO. 12-16-00032-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN RE:	***§***	
ROBERT GLENN WOODARD,	***§***	***ORIGINAL PROCEEDING***
RELATOR	***§***	

MEMORANDUM OPINION

By petition for writ of mandamus, Robert Glenn Woodard challenges the trial court's order consolidating two underlying proceedings.[1] We deny the petition.

BACKGROUND

Eric Woodard and Allison Bass Woodard filed for divorce in Smith County, Texas. The clerk docketed the divorce action as cause number 15-0937-D and assigned it to the 321st Judicial District Court of Smith County.

Robert sued Eric and Allison for reimbursement of payments that he made as guarantor of a loan on Eric and Allison's house. Robert filed the lawsuit in Smith County, and the clerk docketed the lawsuit as cause number 15-1701-C. Initially, the lawsuit was assigned to the 241st Judicial District Court of Smith County. The 241st district court judge signed an order transferring the lawsuit to the 321st district court, and the judge of that court accepted the transfer. Underneath the judge's signature accepting the transfer is a notation that Robert's suit has a new cause number, 15-0937-D. This is the cause number that was assigned to Eric and Allison's divorce action.

---

[1] The real parties in interest are Eric Woodard and Allison Bass Woodard. The respondent is the Honorable Carole Clark, Judge of the 321st Judicial District Court, Smith County, Texas.

Robert filed an objection to the consolidation of the cases, and the trial court held a hearing on Robert's objection. At the hearing, the trial court orally denied Robert's objection and later signed an order memorializing its ruling. No other order regarding consolidation is in the record.

This petition for writ of mandamus followed.

AVAILABILITY OF MANDAMUS

Mandamus is an extraordinary remedy. ***In re Sw. Bell Tel. Co., L.P.***, 235 S.W.3d 619, 623 (Tex. 2007) (orig. proceeding). To obtain mandamus relief, the relator must show that (1) the trial court clearly abused its discretion, and (2) the benefits of mandamus outweigh the detriments to the extent that an appellate remedy is inadequate. ***In re Poly-America***, 262 S.W.3d 337, 346-47 (Tex. 2008) (orig. proceeding).

A trial court clearly abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law. ***Walker v. Packer***, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding). With respect to resolution of factual issues or matters committed to the trial court's discretion, the relator must establish that the trial court could reasonably have reached only one decision. ***Id***. at 839-40. We cannot disturb the trial court's decision unless it is shown to be arbitrary and unreasonable, even if we would have decided the issue differently. ***Id***. at 840. However, a trial court has no discretion in determining what the law is or applying the law to the facts. ***Id***. Thus, a clear failure by the trial court to analyze or apply the law correctly will constitute an abuse of discretion and may result in appellate reversal by extraordinary writ. ***Id***.

In providing guidance for determining whether an appellate remedy is adequate, the Texas Supreme Court has noted that the operative word, "adequate," has no comprehensive definition. ***In re Prudential Ins. of Am.***, 148 S.W.3d 124, 136 (Tex. 2008) (orig. proceeding). Instead, it is simply a proxy for the careful balance of jurisprudential considerations that determine when appellate courts will use original mandamus proceedings to review the actions of lower courts. ***Id***. These considerations include both public and private interests, and the determination is practical and prudential rather than abstract or formulaic. ***Id***. Thus, the adequacy of an appellate remedy must be determined by balancing the benefits of mandamus

review against the detriments. ***In re Team Rocket, L.P.***, 256 S.W.3d 257, 262 (Tex. 2008) (orig. proceeding).

When the benefits of mandamus review outweigh the detriments, appellate courts must consider whether the appellate remedy is adequate. ***Id***. "Mandamus will not issue when the law provides another, plain, adequate, and complete remedy." ***In re Tex. Dep't of Family and Protective Servs.***, 210 S.W.3d 609, 613 (Tex. 2006).

CONSOLIDATION

Robert complains that the trial court abused its discretion in consolidating his suit with Eric and Allison's divorce action. Robert seeks a mandamus to set aside the consolidation of the two cases and an order that the two cases proceed as separate cause numbers to be heard by separate juries.

Applicable Law

> When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

TEX. R. CIV. P. 174(a). The trial court also has discretion, for convenience or to avoid prejudice, to order separate trials of claims or issues. TEX. R. CIV. P. 174(b).

The trial court has broad discretion, but not unlimited discretion, to consolidate cases with common issues of law or fact. ***In re Gulf Coast Bus. Dev. Corp.***, 247 S.W.3d 787, 794 (Tex. App.—Dallas 2008, no pet.) (orig. proceeding). Consolidated actions should be related so that the evidence is relevant and admissible in each action. ***Id.*** And the trial court must balance judicial economy and convenience gained by consolidation against any possibility of delay, prejudice, or jury confusion caused by consolidation. ***In re Shell Oil Co.***, 202 S.W.3d 286, 290 (Tex. App—Beaumont 2006, no pet.) (orig. proceeding). A trial court abuses its discretion if it orders cases consolidated when the convenience factors are substantially outweighed by the risk of an unfair outcome because of prejudice or confusion. ***Dal-Briar Corp. v. Baskette***, 833 S.W.2d 612, 616 (Tex. App.—El Paso 1992, no writ), *abrogated on other grounds by* ***In re Schmitz***, 285 S.W.3d 451 (Tex. 2009). The dominant consideration in consolidation is whether

the resultant trial will be fair and impartial to all parties. ***In re Ethyl Corp.***, 975 S.W.2d 606, 614-15 (Tex. 1998) (orig. proceeding).

Analysis

When Robert's suit was transferred to the 321st district court, it was given the same cause number as Eric and Allison's divorce action (15-0937-D). A notation of the new cause number appears under the judge's signature accepting the transfer. But it is not clear whether the judge ordered the change of the cause number. The trial court did not sign an order explicitly consolidating the cases.

If the notation of the new cause number on the acceptance of the transfer was intended to be a consolidation order, the trial court sua sponte, and without notice or hearing, consolidated the cases. Robert filed an objection to the consolidation of the cases in a pleading filed under cause number 15-0937-D that included only the style of his action against Eric and Allison. In that objection, Robert acknowledged that he was uncertain whether the trial court had consolidated the cases. Robert's objection continued that consolidation of the two cases, if that had occurred, was improper because the cases are not related and trying them together would confuse the jury.

The trial court held a hearing on Robert's objection. At the hearing, the court was informed that Eric and Allison had settled the divorce action with the exception of a Special Warranty Deed for the house that was subject to the loan for which Robert made payments. The court then confirmed that it had consolidated the two cases. The court stated further that a property division in a divorce has to occur at one time and so Robert's lawsuit needed to be decided before the property division.

Following these comments, the trial court vacillated as to whether the cases had been consolidated. The court stated that the cases had not been formally consolidated, but that the trial court would consolidate the cases. The court also mentioned abatement as a possibility, but reiterated that all the property of the marriage must be divided at one time.

The court denied Robert's objection orally at the hearing and by a subsequent written order. The written order was signed in cause number 15-1701-C, the cause number originally given to Robert's suit, and includes only the heading from Robert's lawsuit against Eric and Allison. The order states as follows:

CAME ON TO BE CONSIDERED Plaintiff's Objection to Consolidation of Cause No. 15-1701-C and Cause No. 15-0937-D. Having considered said Objection, the Court finds and rules that Plaintiff Robert Glenn Woodard's objection is

_____ SUSTAINED
_____X_____ OVERRULED

We have reviewed the entire record, and no other written orders refer to the consolidation of the cases. Further, no written order references whether the two cases, or any portions thereof, will be heard by separate juries.

We understand Robert's hesitancy to try a lawsuit seeking reimbursement of payments that he made as guarantor of a loan on Eric and Allison's house in the same trial and before the same jury determining issues relevant to Eric and Allison's divorce. We agree that such a combined trial could lead to confusion or prejudice that would substantially outweigh any benefit received from consolidation of the trials. *See* ***In re Shell Oil Co.***, 202 S.W.3d at 290. But, based on this record, we cannot conclude that a combined trial has been ordered. Nor can we determine whether any aspect of Eric and Allison's divorce remains except the Special Warranty Deed for the house on which Robert made payments. It was Robert's burden to present a record supporting his contention that he is entitled to a writ of mandamus. *See* ***In re Poly-America***, 262 S.W.3d at 346-47. However, the record as presented does not establish that the trial court abused its discretion.

CONCLUSION

Because the record as presented does not establish that the trial court abused its discretion, Robert has not shown he is entitled to a writ of mandamus. Accordingly, we ***deny*** his petition for writ of mandamus without addressing the adequacy of any other available remedy. *See* ***id***.

Of course, if subsequent orders clarify that the trial court intends to combine the trial of Robert's suit with the trial of Eric and Allison's divorce, Robert has the option of filing another petition for writ of mandamus accompanied by a record that includes the additional, clarifying orders.

BRIAN HOYLE
Justice

Opinion delivered April 29, 2016.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

APRIL 29, 2016

NO. 12-16-00032-CV

ROBERT GLENN WOODARD,
Relator
V.
HON. CHRISTI J. KENNEDY,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by **ROBERT GLENN WOODARD**, who is the relator in Cause No. 15-1701-C, pending on the docket of the 321st Judicial District Court of Smith County, Texas. Said petition for writ of mandamus having been filed herein on February 3, 2016, 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., Hoyle, J., and Neeley, J.