

COURT OF APPEALS OF TEXAS, EIGHTH DISTRICT, EL PASO

In re Rosa Serrano, Individually

No. 08-14-00308-CV · No. 08-14-00308-CV · Decided January 19, 2015

SUMMARY

The Eighth District Court of Appeals of Texas considered Rosa Serrano’s petition for writ of mandamus seeking to compel judicial foreclosure on a constitutional lien against real property. The court held that Serrano failed to establish a clear abuse of discretion or the absence of an adequate remedy by appeal and denied mandamus relief. The opinion also granted rehearing and expedited disposition after withdrawing the court’s prior opinion, while denying as moot a motion to recuse Justice Hughes.

CASE DETAILS

COURT	Court of Appeals of Texas, Eighth District, El Paso
WRITING FOR THE COURT	Per curiam; Ann Crawford McClure, Chief Justice; Rodriguez, Justice; Steven Hughes, Justice, not participating
JURISDICTION	Texas
DECIDED	January 19, 2015
DOCKET	08-14-00308-CV
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original mandamus proceeding in which the relator sought an order requiring the respondent judge to judicially foreclose on a constitutional lien against real property.
STANDARD OF REVIEW	Mandamus requires the relator to show both a clear abuse of discretion by the trial court and the absence of an adequate remedy by appeal.
PRECEDENTIAL VALUE	Published memorandum opinion
PARTIES	Rosa Serrano, Individually, Relator v. Virgil Mulanax, Respondent, Pellicano Business Park, L.L.C., Real Party in Interest

TOPICS

- writ of certiorari
- appellate procedure
- standard of review
- real estate
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Rosa Serrano established entitlement to mandamus relief by showing a clear abuse of discretion and the absence of an adequate remedy by appeal.
2. Whether the motion to recuse Justice Hughes remained justiciable after his voluntary recusal.

HOLDINGS

1. The relator was not entitled to mandamus relief because she failed to establish the requirements for mandamus relief.
2. The motion to recuse Justice Hughes was denied as moot because Justice Hughes had voluntarily recused himself from the case.

KEY QUOTATIONS

“To be entitled to mandamus relief, Relator must meet two requirements.” (at 2)

“Based on the petition and record before us, we conclude that Relator has failed to establish that she is entitled to mandamus relief.” (at 2)

FACTUAL BACKGROUND

Rosa Serrano sought mandamus relief concerning a purported constitutional lien against real property owned by Pellicano Business Park, L.L.C. The mandamus record referenced several orders in an underlying case involving a purported mechanical and materialman's lien claim. Serrano asked the appellate court to compel judicial foreclosure of the alleged constitutional lien.

PROCEDURAL HISTORY

The court had previously denied mandamus relief in an opinion issued December 19, 2014. On rehearing, the court granted the motion for rehearing and expedited disposition, withdrew its prior opinion and judgment, denied as moot the motion to recuse Justice Hughes because he had voluntarily recused himself, and again denied the petition for writ of mandamus.

DISPOSITION

writ_denied

CASES CITED

- In re Prudential Insurance Company of America, L.L.C., 148 S.W.3d 124, 135 (Tex. 2004)
- Walker v. Packer, 827 S.W.2d 833, 840 (Tex. 1992)
- In re McAllen Medical Center, Inc., 275 S.W.3d 458, 462 (Tex. 2008)

OPINION

PER CURIAM.

COURT OF APPEALS EIGHTH DISTRICT OF TEXAS EL PASO, TEXAS ' ' No. 08-14-00308-CV IN RE: ROSA SERRANO, INDIVIDUALLY, ' AN ORIGINAL PROCEEDING Relator. ' IN MANDAMUS ' MEMORANDUM OPINION Relator, Rosa Serrano, pro se, has filed a petition for writ of mandamus against the Honorable Virgil Mulanax requesting that that we order him to judicially foreclose on a constitutional lien against real property owned by the Real Party in Interest, Pellicano Business Park, L.L.C.¹ On December 19, 2014, we issued an opinion denying mandamus relief.

Relator filed a motion for rehearing and a motion to recuse the Honorable Steven Hughes, Justice of the Eighth Court of Appeals. She has also filed a motion requesting expedited disposition of her motions. The motion for rehearing and the motion for expedited disposition are granted.

Because Justice Hughes has voluntarily recused himself from this case, the motion to recuse is 1 The mandamus record reflects that the Honorable Thomas Spieczny, Judge of the County Court at Law No. 7 of El Paso County, Texas, entered several orders in a case styled In re: Purported Mechanical and Materialman's Lien Claim of Lien Against Pellicano Business Park, L.L.C., cause number 2012-DCV06341.

The Real Party in Interest filed a motion to recuse Judge Spieczny. The mandamus record does not affirmatively reflect that Judge Spieczny has been recused from the underlying case or that Judge Mulanax has been assigned to it. denied as moot.

The opinion and judgment issued on December 19, 2014 are withdrawn. The following is the opinion of the Court. To be entitled to mandamus relief, Relator must meet two requirements. In re Prudential Insurance Company of America, L.L.C., 148 S.W.3d 124, 135 (Tex. 2004); Walker v. Packer, 827 S.W.2d 833, 840 (Tex. 1992).

First, she must show that the trial court clearly abused its discretion. Prudential, 148 S.W.3d at 135. Second, she must demonstrate that there is no adequate remedy by appeal. In re Prudential, 148 S.W.3d at 135; In re McAllen Medical Center, Inc., 275 S.W.3d 458, 462 (Tex. 2008). Based on the petition and record before us, we conclude that Relator has failed to establish that she is entitled to mandamus relief.

See TEX.R.APP.P. 52.8. Accordingly, the petition is denied. January 15, 2014 ANN CRAWFORD McCLURE, Chief Justice Before McClure, C.J., Rodriguez, and Hughes, JJ. (Hughes, J., not participating) 2