

FOURTH COURT OF APPEALS OF TEXAS

In re Kingdom Cargo, LLC and Almaguer Livian Izaguirre

No. 04-19-00674-CV · No. 04-19-00674-CV · Decided November 13, 2019

SUMMARY

The Fourth Court of Appeals of Texas dismissed a petition for writ of mandamus as moot. The real party in interest withdrew her objections and motion to strike the relators' expert, providing the relief requested and eliminating the dispute.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas
WRITING FOR THE COURT	Per Curiam; Sandee Bryan Marion, Chief Justice; Luz Elena D. Chapa, Justice; Beth Watkins, Justice
JURISDICTION	Texas
DECIDED	November 13, 2019
DOCKET	04-19-00674-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Original mandamus proceeding challenging the trial court's order striking the relators' expert's counter-affidavits and testimony.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential status not expressly stated in the provided text.
PARTIES	Kingdom Cargo, LLC, Almaguer Livian Izaguirre

TOPICS

mootness appellate procedure remedies civil procedure

PRACTICE AREAS

civil procedure appellate procedure remedies

QUESTIONS PRESENTED

1. Whether the mandamus petition should be dismissed as moot after the real party in interest withdrew the objections and motion to strike that formed the basis of the petition.

HOLDINGS

1. The petition for writ of mandamus was moot because the real party in interest withdrew her objections and motion to strike, giving relators the relief they requested.

KEY QUOTATIONS

“After reviewing the transcript of the hearing at which the real party in interest withdrew her objections, we conclude relators obtained the relief requested.” (at 2)

“Therefore, we dismiss relators’ petition for writ of mandamus as moot.” (at 2)

FACTUAL BACKGROUND

The relators challenged the trial court's decision to strike their expert's counter-affidavits and testimony. While the mandamus proceeding was pending, the real party in interest stated on the record that she agreed to withdraw her objections and motion to strike the expert. The withdrawal eliminated the dispute presented in the mandamus petition.

PROCEDURAL HISTORY

Relators filed a petition for writ of mandamus seeking to vacate the trial court's order granting the real party in interest's motion to strike and to obtain an order denying that motion. The appellate court stayed the trial setting and requested responses. At a later hearing, the real party in interest withdrew her objections and motion to strike, and the appellate court concluded that relators had obtained the relief they sought.

DISPOSITION

dismissed

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas MEMORANDUM OPINION No. 04-19-00674-CV IN RE KINGDOM CARGO, LLC and Almaguer Livian Izaguirre Original Mandamus Proceeding 1 PER CURIAM Sitting: Sandee Bryan Marion, Chief Justice Luz Elena D. Chapa, Justice Beth Watkins, Justice Delivered and Filed: November 13, 2019 PETITION FOR WRIT OF MANDAMUS DISMISSED AS MOOT On October 3, 2019, relators filed a petition for writ of mandamus asserting the trial court erred by striking their expert’s counter-affidavits and testimony.

In their prayer for relief, relators asked this court to direct the trial court to (1) vacate its September 13, 2019 order granting the real party in interest’s motion to strike and (2) enter an order denying the real party in interest’s motion to strike. This court stayed the November 4, 2019 trial setting and requested a response from the respondent and the real party in interest.

During an October 22, 2019 hearing before the trial court, the real party in interest stated in open court, on the record, that she agreed to withdraw her objections and motion to strike the 1 This proceeding arises out of Cause No. DC-17-18, styled Ashley Anais Regalado v. Almaguer Livan Izaguirre, et al., pending in the 229th Judicial District Court, Duval County, Texas, the Honorable Baldemar Garza presiding.

04-19-00674-CV expert. The real party in interest then filed a motion asking this court to reconsider the stay on the ground that the issue before this court was now moot, and relators responded. After reviewing the transcript of the hearing at which the real party in interest withdrew her objections, we conclude relators obtained the relief requested.

Therefore, we dismiss relators' petition for writ of mandamus as moot. PER CURIAM -2-