

**COURT OF APPEALS OF TEXAS, TWELFTH COURT OF APPEALS
DISTRICT, TYLER**

In re McBride Operating, LLC

No. 12-22-00279-CV (Tex. App.—Tyler Dec. 7, 2022) (mem. op.) · No. No. 12-22-00279-CV · Decided
December 9, 2022

SUMMARY

The Texas Twelfth Court of Appeals conditionally granted mandamus relief to McBride Operating, LLC, challenging the denial of its Texas Rule of Civil Procedure 91a motion to dismiss. The court addressed the timeliness and scope of the motion and concluded that the real parties in interest’s claims for injunctive relief and damages under the Texas Natural Resources Code were unripe because McBride had not obtained a permit to construct or operate the proposed waste-disposal facility. The opinion also discusses the requirements for mandamus relief and the availability of pre-injury injunctive relief.

CASE DETAILS

COURT	Court of Appeals of Texas, Twelfth Court of Appeals District, Tyler
WRITING FOR THE COURT	Greg Neeley; Worthen, C.J.; Hoyle, J.; Neeley, J.
JURISDICTION	Texas
DECIDED	December 9, 2022
DOCKET	No. 12-22-00279-CV
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original proceeding seeking mandamus relief from the denial of a Texas Rule of Civil Procedure 91a motion to dismiss and motion to dissolve a temporary injunction.
STANDARD OF REVIEW	The merits of a Rule 91a ruling are reviewed de novo. The court reviews only the pleadings and permissible pleading exhibits, construes the pleadings liberally in favor of the plaintiff, accepts pleaded facts as true, and determines whether the cause of action has a basis in law or fact. Mandamus also requires a clear abuse of discretion and no adequate remedy by appeal.
PRECEDENTIAL VALUE	Unpublished memorandum opinion; precedential effect not stated in the provided text.

PARTIES

McBride Operating, LLC v. Hon. James A. Payne, Jr., Respondent,
Terry Allen, Jan Allen, Cypress Creek Farms, LLC

TOPICS

motions to dismiss

subject matter jurisdiction

injunctions

appellate procedure

civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

administrative law

environmental law

remedies

QUESTIONS PRESENTED

1. Whether mandamus relief was appropriate from the denial of McBride's Rule 91a motion to dismiss and motion to dissolve the temporary injunction.
2. Whether the plaintiffs' claims for injunctive and statutory relief were unripe because they depended on McBride obtaining a permit and undertaking future construction and operation of the proposed waste disposal facility.
3. Whether McBride's Rule 91a motion was timely and sufficiently identified the claims challenged under Rule 91a.

HOLDINGS

1. McBride's Rule 91a motion was timely because the amended petition was the first pleading containing the challenged Natural Resources Code claim, and the motion was filed within sixty days after service of that petition. The motion also sufficiently challenged the collective viability of the plaintiffs' remaining claims even though it did not expressly name the Natural Resources Code.
2. The plaintiffs' claims were not ripe because they depended on contingent future events—McBride obtaining a permit and then constructing and operating the proposed waste disposal facility—and the plaintiffs had not alleged a concrete injury or actual interference that had already occurred.
3. Mandamus relief was appropriate because the trial court clearly abused its discretion by denying the Rule 91a motion and motion to dissolve the temporary injunction, and McBride lacked an adequate remedy by appeal.

KEY QUOTATIONS

“Under the ripeness doctrine, we consider whether, at the time a lawsuit is filed, the facts are sufficiently developed so that an injury has occurred or is likely to occur, rather than being contingent or remote.” (8)

“Accordingly, we conclude that the RPIs’ claims are not ripe for judicial review and, consequently, they are not entitled to the relief sought.” (12)

“Having determined that Respondent abused his discretion by denying McBride’s Rule 91a motion to dismiss, we conditionally grant McBride’s petition for writ of mandamus.” (13)

FACTUAL BACKGROUND

The real parties in interest owned land adjoining McBride's property and alleged that McBride's proposed commercial waste disposal facility could harm their land, cattle operation, groundwater, and other water sources. McBride had applied to the Texas Railroad Commission for a permit, but the Commission denied the application, and McBride's appeal remained pending. The plaintiffs sought injunctive and statutory relief based principally on anticipated harm if McBride ultimately obtained a permit and constructed and operated the facility. No permit had issued, and McBride had not begun constructing or operating the facility.

PROCEDURAL HISTORY

Terry Allen, Jan Allen, and Cypress Creek Farms, LLC sued McBride Operating, LLC and others concerning a proposed commercial waste disposal facility. After the plaintiffs amended their petition to assert a Texas Natural Resources Code claim and seek injunctive and statutory relief against McBride, McBride filed a Rule 91a motion to dismiss and motion to dissolve the temporary injunction. The 273rd District Court of Shelby County denied the motions, and McBride sought mandamus relief. The court of appeals conditionally granted the writ and directed the trial court to vacate its denial, grant the motion to dismiss, dissolve the temporary injunction, and dismiss the case.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The trial judge was directed to vacate the August 18, 2022 order denying McBride's motions and instead issue an order granting the Rule 91a motion to dismiss, dissolving the temporary injunction, and dismissing the case. The writ would issue only if the trial court failed to comply within ten days and was required to provide a certified copy of the compliance order.

CASES CITED

- In re Sw. Bell Tel. Co., L.P., 235 S.W.3d 619, 623 (Tex. 2007) (orig. proceeding)
- In re Cerberus Capital Mgmt., L.P., 164 S.W.3d 379, 382 (Tex. 2005) (orig. proceeding)
- In re Fitzgerald, 429 S.W.3d 886, 891 (Tex. App.—Tyler 2014, orig. proceeding)
- In re Farmers Tex. Cty. Mut. Ins. Co., 621 S.W.3d 261, 266 (Tex. 2021) (orig. proceeding)
- Malik v. Geico Advantage Ins. Co., Inc., No. 01-19-00489-CV, 2021 WL 1414275, at *4 (Tex. App.—Houston [1st Dist.] Apr. 15, 2021, pet. denied) (mem. op.)
- Koenig v. Blaylock, 497 S.W.3d 595, 599 (Tex. App.—Austin 2016, pet. denied)
- Walker v. Owens, 492 S.W.3d 787, 790-91 (Tex. App.—Houston [1st Dist.] 2016, no pet.)
- Cooper v. Trent, 551 S.W.3d 325, 331 (Tex. App.—Houston [14th Dist.] 2018, pet. denied)
- Eagle Oil & Gas Co. v. TRO-X, LP, 619 S.W.3d 699, 706 (Tex. 2021)
- Waco Indep. Sch. Dist. v. Gibson, 22 S.W.3d 849, 851-52 (Tex. 2000)

- Ring Energy v. Trey Resources, Inc., 546 S.W.3d 199, 202, 207-08, 211, 215 (Tex. App.—El Paso 2017, no pet.)
- City of Anson v. Harper, 216 S.W.3d 384, 387-91, 396 (Tex. App.—Eastland 2006, no pet.)
- Monk v. Huston, 340 F.3d 279, 282-83 (5th Cir. 2003)
- Smith v. City of Brenham, Tex., 865 F.2d 662 (5th Cir. 1989)
- Gregg v. Delhi-Taylor Oil Corp., 344 S.W.2d 411, 412 (Tex. 1961)
- Hastings Oil Co. v. Texas Co., 234 S.W.2d 389, 398 (Tex. 1950)
- Zawislak v. Moskow, No. 03-18-00280-CV, 2019 WL 2202209, at *4 (Tex. App.—Austin May 22, 2019, no pet.)