

COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS
CHRISTI-EDINBURG

In re Christine Franks

No. 13-08-567-CV (Tex. App.—Corpus Christi—Edinburg Nov. 10, 2008) (mem. op.) · No. 13-08-567-CV ·
Decided November 10, 2008

SUMMARY

The Thirteenth Court of Appeals of Texas considered Christine Franks's petition for writ of mandamus. The court concluded that she had not established entitlement to mandamus relief and denied the petition.

CASE DETAILS

COURT	Court of Appeals of Texas, Thirteenth District, Corpus Christi-Edinburg
WRITING FOR THE COURT	Per Curiam; Chief Justice Valdez; Justice Rodriguez; Justice Benavides
JURISDICTION	Texas
DECIDED	November 10, 2008
DOCKET	13-08-567-CV
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Christine Franks petitioned for a writ of mandamus challenging an unspecified ruling or action below. After requesting and receiving a response from real party in interest Carol Thompson, the court denied mandamus relief.
STANDARD OF REVIEW	Mandamus relief requires the relator to establish both a clear abuse of discretion and the absence of an adequate remedy by appeal. The relator bears a heavy burden of proof.
PRECEDENTIAL VALUE	Unpublished memorandum opinion; likely nonprecedential under the cited Texas appellate rules.
PARTIES	Christine Franks, relator v. Carol Thompson, real party in interest

TOPICS

- appellate procedure
- standard of review
- remedies
- civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

mandamus

QUESTIONS PRESENTED

1. Whether Christine Franks established both a clear abuse of discretion and the absence of an adequate remedy by appeal sufficient to warrant mandamus relief.

HOLDINGS

1. Franks did not establish the prerequisites for mandamus relief and therefore was not entitled to the requested writ.

KEY QUOTATIONS

“Mandamus relief is proper only to correct a clear abuse of discretion when there is no adequate remedy by appeal.”

“The relator has the burden of establishing both prerequisites to mandamus relief.”

FACTUAL BACKGROUND

The opinion provides no underlying substantive facts. Christine Franks sought mandamus relief, and Carol Thompson filed a response after the appellate court requested one.

PROCEDURAL HISTORY

Franks filed her petition for writ of mandamus on October 3, 2008. The court requested a response from the real parties in interest, received a response from Carol Thompson, and concluded that Franks had not established entitlement to mandamus relief.

DISPOSITION

writ_denied

CASES CITED

- In re Prudential Ins. Co. of Am., 148 S.W.3d 124, 135-36 (Tex. 2004)
- Walker v. Packer, 827 S.W.2d 833, 839 (Tex. 1992)
- In re CSX Corp., 124 S.W.3d 149, 151 (Tex. 2003) (orig. proceeding)
- In re Epic Holdings, Inc., 985 S.W.2d 41 (Tex. 1998)
- LeJune v. Pow-Sang, No. 01-04-00843-CV, 2006 Tex. App. LEXIS 2740, at *10-17 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (mem. op.)
- In re Lynd Co., 195 S.W.3d 682 (Tex. 2006)

OPINION

PER CURIAM.

NUMBER 13-08-567-CV COURT OF APPEALS THIRTEENTH DISTRICT OF TEXAS
CORPUS CHRISTI - EDINBURG IN RE CHRISTINE FRANKS On Petition for Writ of
Mandamus MEMORANDUM OPINION Before Chief Justice Valdez and Justices Rodriguez and
Benavides Memorandum Opinion Per Curiam (1) Relator, Christine Franks, filed a petition for
writ of mandamus in the above cause on October 3, 2008.

The Court requested a response from the real parties in interest, and one was received from real
party in interest, Carol Thompson. Mandamus relief is proper only to correct a clear abuse of
discretion when there is no adequate remedy by appeal. See *In re Prudential Ins. Co. of Am.*, 148
S.W.3d 124, 135-36 (Tex. 2004); *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex.

1992). The relator has the burden of establishing both prerequisites to mandamus relief. *In re CSX
Corp.*, 124 S.W.3d 149, 151 (Tex. 2003) (orig. proceeding). This burden is a heavy one. See *In re
Epic Holdings, Inc.*, 985 S.W.2d 41 (Tex. 1998).

The Court, having examined and fully considered the petition for writ of mandamus and the
response thereto, is of the opinion that relator has not shown herself entitled to the relief sought.
See *Prudential Ins. Co. of Am.*, 148 S.W.3d at 135-36; see also *LeJune v. Pow-Sang*, No. 01-04-
00843-CV, 2006 Tex. App. LEXIS 2740, at *10-17 (Tex. App.-Houston [1st Dist.]

2006, no pet.) (mem. op.), disapproved on other grounds by *In re Lynd Co.*, 195 S.W.3d 682 (Tex.
2006). Accordingly, the petition for writ of mandamus is DENIED. See Tex. R. App. P. 52.8(a).
PER CURIAM Memorandum Opinion delivered and filed this 10th day of November, 2008. 1.
See Tex. R. App. P. 52.8(d) ("When denying relief, the court may hand down an opinion but is not
required to do so."); Tex. R. App.

P. 47.4 (distinguishing opinions and memorandum opinions).