

COURT OF APPEALS OF TEXAS, NINTH DISTRICT AT BEAUMONT

In re Stephen A. Smith

In re Smith · No. 09-16-00288-CV · Decided September 22, 2016

SUMMARY

The Ninth District Court of Appeals of Texas considered Stephen A. Smith's petition for a writ of mandamus seeking to compel the trial court to vacate an order. After Smith filed an agreed motion to dismiss, the court lifted its stay and dismissed the original proceeding without reaching the merits and without prejudice.

CASE DETAILS

COURT	Court of Appeals of Texas, Ninth District at Beaumont
WRITING FOR THE COURT	Per Curiam; McKeithen, C.J.; Kreger, J.; Johnson, J.
JURISDICTION	Texas
DECIDED	September 22, 2016
DOCKET	09-16-00288-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Original mandamus proceeding in which the relator moved to dismiss his petition after the trial court was permitted to consider an agreed final judgment.
PRECEDENTIAL VALUE	published

TOPICS

- appellate procedure
- remedies
- civil procedure

PRACTICE AREAS

- civil procedure
- appellate procedure
- remedies

QUESTIONS PRESENTED

- Whether the relator's agreed motion to dismiss the original mandamus proceeding should be granted.
- Whether the mandamus proceeding should be dismissed without reference to the merits and without prejudice.

KEY QUOTATIONS

“We lift the stay order previously entered in this proceeding, and we dismiss this original proceeding without reference to the merits and without prejudice.” (at 2)

FACTUAL BACKGROUND

Smith sought mandamus relief concerning an order entered in litigation brought against him by Carl Cannon, Lisa Cannon, Mark Atkins, Cathy Atkins, David Cannon, Val Cannon, Chris Gaskill, Cindy Gaskill, Justin Regan, and Shannon Regan. The trial court was permitted to consider an agreed final judgment, after which Smith requested dismissal of his original proceeding; the court of appeals did not reach the merits of the mandamus petition.

PROCEDURAL HISTORY

Stephen A. Smith filed a petition for a writ of mandamus seeking to compel the 284th District Court of Montgomery County to vacate an order. The court of appeals initially stayed further trial-court proceedings, later lifted the stay to permit consideration of an agreed final judgment, and then granted Smith's agreed motion to dismiss the mandamus proceeding.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

The court lifted the stay previously entered in the proceeding; no remand on the merits was ordered.

OPINION

in Re Stephen A. Smith

PER CURIAM.

In The Court of Appeals Ninth District of Texas at Beaumont _____

NO. 09-16-00288-CV

IN RE STEPHEN A. SMITH

Original
Proceeding 284th District Court of Montgomery County, Texas Trial Cause No. 16-07-07602-CV

MEMORANDUM OPINION

On August 19, 2016, Stephen A. Smith filed a petition for a writ of mandamus to compel the trial court to vacate an order in trial court cause number 16-07-07602-CV, Carl Cannon, Lisa Cannon, Mark Atkins, Cathy Atkins, David Cannon, Val Cannon, Chris Gaskill, Cindy Gaskill, Justin Regan, and Shannon Regan v. Stephen A. Smith. We stayed further proceedings in the trial court, but later lifted the stay to allow the trial court to consider an agreed final judgment. On August 31,

2016, the relator filed an agreed motion to dismiss this original proceeding on his mandamus petition. The motion is granted. We lift the 1 stay order previously entered in this proceeding, and we dismiss this original proceeding without reference to the merits and without prejudice. PETITION DISMISSED.

PER CURIAM

Submitted on September 21, 2016 Opinion Delivered September 22, 2016 Before McKeithen, C.J., Kreger and Johnson, JJ. 2