

COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS AT
AMARILLO

In re Tom Bernson d/b/a Bernson Enterprises

No. 07-08-0117-CV · No. No. 07-08-0117-CV · Decided April 17, 2008

SUMMARY

The Texas Court of Appeals for the Seventh District denied Tom Bernson’s petition for writ of mandamus seeking additional discovery time in an underlying case. Because the underlying case had already been tried, the court held that the record did not demonstrate that an appeal would be an inadequate remedy.

CASE DETAILS

COURT	Court of Appeals for the Seventh District of Texas at Amarillo
WRITING FOR THE COURT	James T. Campbell; William J. Hancock; John T. Boyd, Chief Justice (Ret.), sitting by assignment
JURISDICTION	Texas
DECIDED	April 17, 2008
DOCKET	No. 07-08-0117-CV
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Petition for writ of mandamus seeking to compel the trial court to grant additional time for discovery.
STANDARD OF REVIEW	Mandamus requires a showing that the trial court clearly abused its discretion and that the relator lacks an adequate remedy at law.
PRECEDENTIAL VALUE	published
PARTIES	Tom Bernson d/b/a Bernson Enterprises, relator

TOPICS

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

PRACTICE AREAS

- civil procedure
- appellate procedure
- remedies

QUESTIONS PRESENTED

1. Whether mandamus relief was available to compel additional discovery time after the underlying case had been tried.
2. Whether Bernson demonstrated that he lacked an adequate remedy by appeal.

HOLDINGS

1. Mandamus relief was unavailable because, after the underlying case had been tried, the record did not demonstrate that an appeal from the trial court's judgment would be an inadequate remedy.

KEY QUOTATIONS

"A writ of mandamus is not a substitute for an appeal."

"The underlying case having been tried, we have nothing to demonstrate that appeal of the trial court's judgment would not provide an adequate remedy for relator's complaint."

FACTUAL BACKGROUND

Tom Bernson sought additional discovery time in an underlying case, but the trial court denied the request. Trial was scheduled for March 17, 2008, and the court of appeals denied Bernson's contemporaneous request for an emergency stay. The case was tried, the jury answered all submitted questions in Bernson's favor, and Bernson asserted that he had not presented claims dependent on the discovery he believed was improperly denied.

PROCEDURAL HISTORY

Bernson filed a petition for writ of mandamus and an emergency motion to stay the underlying trial after the trial court denied his request for additional discovery time. The court denied emergency relief, and the underlying case was tried with the jury answering all submitted questions in Bernson's favor. The court of appeals reached the merits of the mandamus petition and denied relief because the record did not show that appeal from the trial court's eventual judgment would be inadequate.

DISPOSITION

writ_denied

CASES CITED

- Walker v. Packer, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding)
- In re Tex. Dep't of Family & Protective Servs., 210 S.W.3d 609, 612 (Tex. 2006) (orig. proceeding)

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