

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)

OPINION

in Re Tom Bernson D/B/A Bernson Enterprises

PER CURIAM.

NO. 07-08-0117-CV

IN THE COURT OF APPEALS

FOR THE SEVENTH DISTRICT OF TEXAS

AT AMARILLO
PANEL E
APRIL 17, 2008

IN RE TOM BERNSON, D/B/A BERNSON ENTERPRISES, RELATOR

Before CAMPBELL, and HANCOCK, JJ. and BOYD, S.J.
(footnote: 1)

ON PETITION FOR WRIT OF MANDAMUS

On March 17, 2008, relator Tom Bernson d/b/a Bernson Enterprises filed a petition for writ of mandamus seeking an order compelling the trial court to grant additional time for discovery in the underlying case. Because trial of the underlying case was scheduled to begin on March 17, and as the essence of relator's requested relief by this original proceeding is additional discovery time, relator contemporaneously filed a motion for emergency relief seeking a stay of the trial. On March 17, we denied relator's request for emergency relief. On April 11, relator filed a pleading with this court explaining that the underlying case was tried, the jury answered all questions submitted in his favor, and he has submitted a proposed judgment to the trial court. According to relator, however, at trial he chose not to present claims he deemed dependant on the discovery he alleges the trial court wrongly denied. Relator asserts the trial court's entry of a judgment thus may not cure the harm caused by its denial of additional discovery. Relator concludes his pleading by asking us to either leave his petition for writ of mandamus pending until the trial court enters judgment in the underlying case or reach the merits of his petition. We will address the merits. Relator's complaint with the trial court arises from the assertedly wrongful denial of discovery by that court. The underlying case now has been tried. To obtain relief by mandamus, relator must show the trial court clearly abused its discretion and he possesses no adequate remedy at law. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). A court of appeals may not issue a writ of mandamus if the record fails to demonstrate the lack of an adequate remedy on appeal. *In re Tex. Dep't of Family & Protective Servs.*, 210 S.W.3d 609, 612 (Tex. 2006) (orig. proceeding). A writ of mandamus is not a substitute for an appeal. See *Walker*, 827 S.W.2d at 840-41. 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. Accordingly, relator's petition for writ of mandamus is denied. Tex. R. App. P. 52.8(a). James T. Campbell Justice

FOOTNOTES

1: John T. Boyd, Chief Justice (Ret.), Seventh Court of Appeals, sitting by assignment.