

FOURTH COURT OF APPEALS OF TEXAS, SAN ANTONIO

In re Fidelity National Title Insurance Co.

No. 04-13-00268-CV · No. No. 04-13-00268-CV · Decided May 8, 2013

SUMMARY

The Fourth Court of Appeals of Texas denied Fidelity National Title Insurance Co.'s petition for writ of mandamus without prejudice. The court held that the relator failed to explain why it lacked an adequate remedy by appeal and failed to comply with several Texas Rule of Appellate Procedure 52 requirements concerning factual support, certification, and the record.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas, San Antonio
WRITING FOR THE COURT	Per Curiam; Sandee Bryan Marion, Justice; Patricia O. Alvarez, Justice; Luz Elena D. Chapa, Justice
JURISDICTION	Texas
DECIDED	May 8, 2013
DOCKET	No. 04-13-00268-CV
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original proceeding in which Fidelity National Title Insurance Co. sought a writ of mandamus challenging an order denying its motion to compel.
STANDARD OF REVIEW	Mandamus relief requires the relator to establish both that the trial court abused its discretion and that the relator lacks an adequate remedy by appeal.
PRECEDENTIAL VALUE	nonprecedential memorandum opinion

TOPICS

- appellate procedure
- discovery dispute
- civil procedure
- remedies

PRACTICE AREAS

- civil procedure
- appellate procedure
- insurance

QUESTIONS PRESENTED

1. Whether Fidelity was entitled to mandamus relief from the order denying its motion to compel.
2. Whether the mandamus petition satisfied the requirements of Texas Rule of Appellate Procedure 52.

HOLDINGS

1. Mandamus relief is available only when the relator establishes both that the trial court abused its discretion and that the relator lacks an adequate remedy by appeal; Fidelity failed to address the adequate-remedy requirement.
2. A mandamus petition must comply with the factual-support, certification, and record-filing requirements of Texas Rule of Appellate Procedure 52; Fidelity's petition failed to comply with numerous requirements.

KEY QUOTATIONS

“mandamus relief is only available if the relator establishes both the trial court abused its discretion and relator lacks an adequate remedy by appeal.” (at 1)

FACTUAL BACKGROUND

Fidelity National Title Insurance Co. was the plaintiff in an underlying action styled Fidelity National Title Insurance Co. v. Andrew M. Parker. The trial court denied Fidelity's motion to compel on April 29, 2013. Fidelity then sought mandamus relief from the court of appeals.

PROCEDURAL HISTORY

Fidelity National Title Insurance Co. filed a petition for writ of mandamus challenging the trial court's April 29, 2013 order denying its motion to compel. The court of appeals denied the petition without prejudice because the relator did not address the lack of an adequate remedy by appeal and failed to comply with multiple Texas Rule of Appellate Procedure 52 requirements.

DISPOSITION

writ_denied

CASES CITED

- In re Prudential Ins. Co. of Am., 148 S.W.3d 124, 125 (Tex. 2004) (orig. proceeding)

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas MEMORANDUM OPINION No. 04-13-00268-CV
IN RE FIDELITY NATIONAL TITLE INSURANCE CO. Original Proceeding 1 PER CURIAM
Sitting: Sandee Bryan Marion, Justice Patricia O. Alvarez, Justice Luz Elena D. Chapa, Justice
Delivered and Filed: May 8, 2013 PETITION FOR WRIT OF MANDAMUS DENIED On April

29, 2013, Relator Fidelity National Title Insurance Co. filed a petition for writ of mandamus, complaining of the trial court's April 29, 2013 Order Denying Plaintiff's Motion to Compel.

For the following reasons, the petition for writ of mandamus is denied without prejudice. First, mandamus relief is only available if the relator establishes both the trial court abused its discretion and relator lacks an adequate remedy by appeal. See *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 125 (Tex. 2004) (orig. proceeding). Relator fails to address why it lacks an adequate remedy by appeal.

1 This proceeding arises out of Cause No. 2012-CI-05517, styled Fidelity National Title Insurance Co. v. Andrew M. Parker, pending in the 224th Judicial District Court, Bexar County, Texas, the Honorable Cathy Stryker presiding.

However, the order complained of was signed by the Honorable Peter Sakai, presiding judge of the 225th Judicial District Court, Bexar County, Texas. 04-13-00268-CV In addition, Relator's petition fails to comply with numerous requirements outlined in Texas Rule of Appellate Procedure 52. See TEX. R. APP. P. 52.3(g) ("[e]very statement of fact in the petition must be supported by citation to competent evidence included in the appendix or record"); TEX. R. APP.

P. 52.3(j) ("[t]he person filing the petition must certify that he or she has reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record"); TEX. R. APP. P. 52.7(a)(2) (relator must file with the petition "a properly authenticated transcript of any relevant testimony from any underlying proceeding, including any exhibits offered in evidence, or a statement that no testimony was adduced in connection with the matter complained").

Accordingly, the petition for writ of mandamus is DENIED WITHOUT PREJUDICE. TEX. R. APP. P. 52.8(a). PER CURIAM -2-