

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.

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-