

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

In re Susan Gail Perrilloux

No. 05-19-01584-CV (Tex. App.—Dallas May 1, 2020) · No. No. 05-19-01584-CV · Decided May 1, 2020

SUMMARY

The Fifth District Court of Appeals at Dallas conditionally granted in part and denied in part Susan Gail Perrilloux’s petition for writ of mandamus challenging a contempt order arising from a Texas Rule of Civil Procedure 202 pre-suit deposition. The court held that document production may be compelled in a Rule 202 proceeding and upheld the production-related portions of the order. It vacated the \$18,566.34 monetary sanction because Rule 215.2(b) does not authorize attorney’s fees and expenses against a nonparty deponent, while upholding the potential contempt confinement and fine.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	David J. Schenck; Justices Schenck, Reichek, and Evans
JURISDICTION	Texas
DECIDED	May 1, 2020
DOCKET	No. 05-19-01584-CV
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original mandamus proceeding challenging a trial court contempt order entered in a Texas Rule of Civil Procedure 202 pre-suit discovery proceeding.
STANDARD OF REVIEW	Mandamus requires a clear abuse of discretion and the absence of an adequate remedy by appeal. Legal issues are reviewed de novo, while factual determinations are reviewed for whether the trial court could reasonably have reached its decision.
PRECEDENTIAL VALUE	Unpublished memorandum opinion; limited precedential value under Texas appellate rules.
PARTIES	Susan Gail Perrilloux, Relator v. Real parties in interest

TOPICS

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QUESTIONS PRESENTED

1. Whether mandamus review was available to challenge the trial court's exercise of personal jurisdiction over Perrilloux after she voluntarily dismissed her interlocutory appeal from the denial of her special appearance.
2. Whether the real parties in interest adequately pleaded standing to bring the Rule 202 proceeding.
3. Whether Texas Rule of Civil Procedure 202 permits a pre-suit deposition subpoena to require production of documents.
4. Whether the subpoena and Rule 202 order adequately identified the documents Perrilloux was required to produce.
5. Whether Rule 215.2(b) authorizes attorney's fees, costs, and expenses as sanctions against a nonparty deponent in a Rule 202 proceeding.
6. Whether the trial court could order a fine and possible arrest and confinement for failure to comply with the remaining discovery obligations.

HOLDINGS

1. Mandamus relief was unavailable for Perrilloux's personal-jurisdiction complaint because she had an adequate remedy through an interlocutory appeal from the denial of her special appearance and voluntarily dismissed that appeal.
2. The real parties in interest met their pleading burden concerning their interest in the anticipated action, and Perrilloux could not establish an abuse of discretion based on lack of standing.
3. Rule 202 permits a petitioner to request production of documents in connection with a pre-suit deposition.
4. The trial court did not abuse its discretion in requiring Perrilloux to produce documents relating to the purported Hamp Williams Trust, including the R.E. Trabue judgment and the related power of attorney, even though those documents did not themselves contain the words 'trust' or 'trust estate.'
5. Rule 215.2(b) does not authorize an award of reasonable expenses, attorney's fees, and costs against a nonparty Rule 202 deponent; the trial court therefore abused its discretion by imposing \$18,566.34 in such sanctions.
6. The trial court did not abuse its discretion by ordering a warrant to issue if Perrilloux failed to comply with the portion of the contempt order that remained effective, because section 21.002(b) authorizes confinement for contempt for up to six months.
7. Mandamus was proper to review the challenged contempt sanctions because contempt orders are not appealable and Perrilloux therefore lacked an adequate remedy by appeal.

KEY QUOTATIONS

“By its plain terms, Rule 215.2(b) applies only to parties. Id.; see also Pope v. Davidson, 849 S.W.2d 916, 920 (Tex. App.—Houston [14th Dist.] 1993, orig. proceeding) (observing that Rule 215.2(b) does not contemplate sanctions against nonparties).” (at 12–13)

“Thus, the trial court was limited to imposing a \$500 monetary fine and ordering confinement in the county jail for no more than six months, and its imposition of a fine of \$18,566.34, which included costs, expenses, and attorney’s fees the real parties in interest incurred in connection with relator’s deposition and the motion for contempt, was an abuse of discretion.” (at 13)

FACTUAL BACKGROUND

The real parties in interest claimed to be beneficiaries of a purported Hamp Williams Trust and sought Rule 202 pre-suit discovery to investigate possible claims concerning the trust, its trustees, and trust property. Perrilloux, a Florida resident who had helped her deceased husband investigate the purported trust, was ordered to appear for a deposition and produce documents concerning the trust. After the deposition, the trial court ordered her to produce additional documents and imposed \$18,566.34 in attorney's fees, costs, and expenses as contempt sanctions, with possible arrest and confinement for noncompliance.

PROCEDURAL HISTORY

The real parties in interest sought pre-suit depositions and document production concerning a purported Hamp Williams Trust. The trial court denied Perrilloux's special appearance, entered a Rule 202 order, and later held her in contempt and imposed \$18,566.34 in monetary sanctions, together with a possible arrest warrant and confinement for noncompliance. Perrilloux sought mandamus relief. The court of appeals conditionally granted mandamus relief as to the attorney's fees, costs, and expenses portion of the sanctions and denied relief as to the remaining portions of the order.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The trial court was directed to vacate, within fifteen days of the opinion, the order imposing the \$18,577.34 sanction amount stated in the conclusion. The writ would issue only if the trial court failed to comply; the remaining portions of the order were left undisturbed, and the appellate stay was lifted.

CASES CITED

- Walker v. Packer, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding)
- In re McAllen Med. Ctr., Inc., 275 S.W.3d 458, 464 (Tex. 2008) (orig. proceeding)
- In re Prudential Ins. Co., 148 S.W.3d 124, 136 (Tex. 2004) (orig. proceeding)
- In re Van Waters & Rogers, Inc., 145 S.W.3d 203, 211 (Tex. 2004) (orig. proceeding) (per curiam)
- Raymond Overseas Holding, Ltd. v. Curry, 955 S.W.2d 470, 471 (Tex. App.—Fort Worth 1997, no pet.)

- In re Anand, No. 01-12-01106-CV, 2013 WL 1316436, at *3 (Tex. App.—Houston [1st Dist.] Apr. 2, 2013, orig. proceeding) (mem. op.)
- In re City of Tatum, 567 S.W.3d 800, 808 (Tex. App.—Tyler 2018, orig. proceeding)
- Cognata v. Down Hole Injection, Inc., 375 S.W.3d 370, 372, 374 (Tex. App.—Houston [14th Dist.] 2012, pet. denied)
- In re Christus Spohn Hosp. Kleberg, 222 S.W.3d 434, 437 (Tex. 2007) (orig. proceeding)
- In re E.A., 287 S.W.3d 1, 5 (Tex. 2009)
- Pope v. Davidson, 849 S.W.2d 916, 920 (Tex. App.—Houston [14th Dist.] 1993, orig. proceeding)
- In re Daugherty, No. 05-18-00290-CV, 2018 WL 3031658, at *1, *4–5 (Tex. App.—Dallas June 19, 2018, orig. proceeding) (mem. op.)
- Cadle Co. v. Lobingier, 50 S.W.3d 662, 671 (Tex. App.—Fort Worth 2001, pet. denied)
- In re Martin, 523 S.W.3d 165, 169 (Tex. App.—Dallas 2017, orig. proceeding)
- Rosser v. Squier, 902 S.W.2d 962, 962 (Tex. 1995) (orig. proceeding)