

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

In re R. Wayne Johnson

No. 04-18-00641-CV · No. 04-18-00641-CV · Decided October 4, 2018

SUMMARY

The Fourth Court of Appeals of Texas declined to act on the relator’s amended petition for writ of mandamus because the underlying case had been removed to federal court. The court stated that it could proceed no further unless and until the federal court remanded the case, and ordered that the proceeding remain inactive pending a certified remand order.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourth District, San Antonio
WRITING FOR THE COURT	Karen Angelini; Marialyn Barnard; Patricia O. Alvarez
JURISDICTION	Texas
DECIDED	October 4, 2018
DOCKET	04-18-00641-CV
DISPOSITION	other
PROCEDURAL POSTURE	Original mandamus proceeding arising from a case pending in Texas state court that was removed to federal court while the mandamus proceeding was pending.
PRECEDENTIAL VALUE	Published Texas Court of Appeals order
PARTIES	R. Wayne Johnson v. Peter O'Rourke, et al.

TOPICS

- appellate procedure
- federalism
- civil procedure

PRACTICE AREAS

- civil procedure
- appellate procedure
- federalism

QUESTIONS PRESENTED

- Whether the Texas Court of Appeals could act on an amended petition for mandamus after the underlying case had been removed to federal court.

HOLDINGS

1. After the underlying case was removed to federal court, the Texas Court of Appeals could proceed no further unless and until the federal court remanded the case; therefore, it could not take action on the amended writ of mandamus.

KEY QUOTATIONS

“proceed no further unless and until the case is remanded.”

FACTUAL BACKGROUND

R. Wayne Johnson sought mandamus relief in the Texas Court of Appeals in connection with an underlying case pending in Webb County district court. On August 27, 2018, the underlying case was removed to federal court. While the mandamus proceeding was abated, Johnson filed a pro se amended writ of mandamus.

PROCEDURAL HISTORY

The underlying case, Cause No. 2018CVK001331D3, was pending in the 341st Judicial District Court of Webb County, Texas. After the case was removed to federal court on August 27, 2018, the court of appeals abated the mandamus proceeding and removed it from the active docket. The relator later filed a pro se amended writ of mandamus, but the court held that removal barred it from taking further action unless and until the federal court remanded the case.

DISPOSITION

other

REMAND INSTRUCTIONS

The mandamus proceeding will be reinstated only upon the filing of a certified copy of a remand order from the federal court.

CASES CITED

- Meyerland Co. v. F.D.I.C., 848 S.W.2d 82, 83 (Tex. 1993)

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas October 4, 2018 No. 04-18-00641-CV IN RE R. Wayne JOHNSON Original Mandamus Proceeding1 ORDER Sitting: Karen Angelini, Justice Marialyn Barnard, Justice Patricia O. Alvarez, Justice On August 27, 2018, the underlying case was removed to federal court.

On September 19, 2018, this court issued an order abating this mandamus proceeding and removing the proceeding from this court’s active docket. This proceeding will be reinstated only

upon the filing of a certified copy of a remand order from the federal court.

On October 1, 2018, relator filed a pro se “Amended Writ of Mandamus.” Because the underlying case has been removed to federal court, this court may “proceed no further unless and until the case is remanded.” *Meyerland Co. v. F.D.I.C.*, 848 S.W.2d 82, 83 (Tex. 1993) (quoting 28 U.S.C. § 1446(d)) (order).

Therefore, this court may not take any action on the “Amended Writ of Mandamus.” It is so ORDERED on this 4th day of October, 2018. PER CURIAM ATTESTED TO:

KEITH E. HOTTLE, Clerk of Court 1 This proceeding arises out of Cause No. 2018CVK001331D3, styled R. Wayne Johnson v. Peter O'Rourke, et al., pending in the 341st Judicial District Court, Webb County, Texas, the Honorable Rebecca Ramirez Palomo presiding.