

**COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS
CHRISTI–EDINBURG**

In re Walker & Twenhafel, LLP

No. 13-14-00065-CV (Tex. App.—Corpus Christi–Edinburg Feb. 14, 2014) (mem. op.) · No. 13-14-00065-CV ·
Decided February 14, 2014

SUMMARY

The Thirteenth Court of Appeals of Texas denied Walker & Twenhafel, LLP’s petition for writ of mandamus and motion for emergency relief. The relator argued that the trial court abused its discretion by denying a stay of the underlying lawsuit based on comity, but the court concluded that relator had not shown entitlement to mandamus relief.

CASE DETAILS

COURT	Court of Appeals of Texas, Thirteenth District, Corpus Christi–Edinburg
WRITING FOR THE COURT	Per Curiam; Chief Justice Valdez; Justice Benavides; Justice Longoria
JURISDICTION	Texas
DECIDED	February 14, 2014
DOCKET	13-14-00065-CV
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Petition for writ of mandamus challenging the trial court's denial of a motion to stay the underlying lawsuit based on comity.
STANDARD OF REVIEW	Mandamus relief requires the relator to show that the trial court abused its discretion and that the relator lacks an adequate remedy by appeal. A trial court abuses its discretion when its decision is so arbitrary and unreasonable that it constitutes clear and prejudicial legal error, or when the court clearly fails to correctly analyze or apply the law.
PRECEDENTIAL VALUE	Published memorandum opinion; no reporter citation appears in the source.
PARTIES	Walker & Twenhafel, LLP v. Roman Geronimo Martinez Mendez

TOPICS

- appellate procedure
- civil procedure
- remedies
- commercial litigation

PRACTICE AREAS

civil procedure

appellate procedure

remedies

commercial litigation

QUESTIONS PRESENTED

1. Whether the relator established entitlement to a writ of mandamus based on the trial court's denial of a stay sought under the principle of comity.
2. Whether the relator's original verification was defective and, if so, whether leave should be granted to file a corrected verification.
3. Whether the relator was entitled to emergency relief pending resolution of the mandamus petition.

HOLDINGS

1. The relator was not entitled to mandamus relief because it failed to show that the trial court abused its discretion and that it lacked an adequate remedy by appeal.
2. Mandamus may be an appropriate vehicle to preserve principles of comity, but the relator still must establish the requirements for mandamus relief.
3. The court granted the relator leave to file its corrected verification.

KEY QUOTATIONS

“To be entitled to the extraordinary relief of a writ of mandamus, relator must show that the trial court abused its discretion and there is no adequate remedy by appeal.”

FACTUAL BACKGROUND

Walker & Twenhafel, LLP was a party to an underlying lawsuit in which it sought a stay based on the principle of comity. After the trial court denied the stay, Walker & Twenhafel sought mandamus relief and an emergency stay from the court of appeals.

PROCEDURAL HISTORY

Walker & Twenhafel, LLP filed a petition for writ of mandamus and a motion for emergency stay after the trial court denied its motion to stay the underlying lawsuit on comity grounds. The court received a response from Martinez Mendez and a reply from the relator, granted leave to file a corrected verification, and denied both mandamus relief and the emergency motion.

DISPOSITION

writ_denied

CASES CITED

- In re Laihe Corp., 307 S.W.3d 314, 316 (Tex. 2010) (orig. proceeding)
- In re Prudential Ins. Co. of Am., 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding)

- In re Columbia Med. Ctr. of Las Colinas, 306 S.W.3d 246, 248 (Tex. 2010) (orig. proceeding)
- In re Cerberus Capital Mgmt., L.P., 164 S.W.3d 379, 382 (Tex. 2005) (orig. proceeding)
- In re BP Oil Supply Co., 317 S.W.3d 915, 922 (Tex. App.—Houston [14th Dist.] 2010, orig. proceeding)
- In re Cooper Indus., LLC, No. 14-13-00500-CV, 2013 WL 3893984, at *1 (Tex. App.—Houston [14th Dist.] July 25, 2013, orig. proceeding) (per curiam) (mem. op.)
- Ashton Grove L.C. v. Jackson Walker L.L.P., 366 S.W.3d 790, 794 (Tex. App.—Dallas 2012, no pet.)
- In re Helix Energy Solutions Grp., Inc., No. 14-13-00238-CV, 2013 WL 5470089, at *4 (Tex. App.—Houston [14th Dist.] Sept. 30, 2013, orig. proceeding)

OPINION

PER CURIAM.

NUMBER 13-14-00065-CV COURT OF APPEALS THIRTEENTH DISTRICT OF TEXAS CORPUS CHRISTI - EDINBURG IN RE WALKER & TWENHAFEL, LLP On Petition for Writ of Mandamus. MEMORANDUM OPINION Before Chief Justice Valdez and Justices Benavides and Longoria Memorandum Opinion Per Curiam¹ On February 3, 2014, relator, Walker & Twenhafel, LLP, filed a petition for writ of mandamus and motion for emergency stay contending that the trial court abused its discretion in denying its motion to stay the underlying lawsuit based on the principle of comity.

The Court has requested and received a response to the petition for writ of mandamus from the real party in interest, Roman Geronimo Martinez Mendez, and has further received a reply thereto from relator. ¹ See TEX. R. APP. P. 52.8(d) (“When denying relief, the court may hand down an opinion but is not required to do so. When granting relief, the court must hand down an opinion as in any other case.”); TEX. R. APP.

P. 47.4 (distinguishing opinions and memorandum opinions). As a preliminary matter, Martinez contends that the petition for writ of mandamus should be denied because relator’s verification for the petition was defective. Relator has filed a corrected verification with a motion for leave to file the corrected verification.

We grant leave for relator to file the corrective verification. To be entitled to the extraordinary relief of a writ of mandamus, relator must show that the trial court abused its discretion and there is no adequate remedy by appeal.

In re Laibe Corp., 307 S.W.3d 314, 316 (Tex. 2010) (orig. proceeding); In re Prudential Ins. Co. of Am., 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). A trial court abuses its discretion if it reaches a decision that is so arbitrary and unreasonable that it constitutes a clear and prejudicial error of law, or if it clearly fails to correctly analyze or apply the law.

In re Columbia Med. Ctr. of Las Colinas, 306 S.W.3d 246, 248 (Tex. 2010) (orig. proceeding); In re Cerberus Capital Mgmt., LP., 164 S.W.3d 379, 382 (Tex. 2005) (orig. proceeding). Mandamus

is appropriate to preserve the principles of comity. See *In re BP Oil Supply Co.*, 317 S.W.3d 915, 922 (Tex. App.—Houston [14th Dist.] 2010, orig. proceeding); see also *In re Cooper Indus., LLC*, No. 14-13-00500-CV, 2013 WL 3893984, at 1 (Tex.

App.—Houston [14th Dist.] July 25, 2013, orig. proceeding) (per curiam) (mem. op.). The Court, having examined and fully considered the petition for writ of mandamus, the response, and the reply, is of the opinion that relator has not shown itself entitled to the relief sought. *Ashton Grove L.C. v. Jackson Walker L.L.P.*, 366 S.W.3d 790, 794 (Tex. App.—Dallas 2012, no pet.); *In re Helix Energy Solutions Grp., Inc.*, No. 14-13- 00238-CV, 2013 WL 5470089, at *4 (Tex.

App.—Houston [14th Dist.] Sept. 30, 2013, orig. proceeding). Accordingly, the petition for writ of mandamus is DENIED. See TEX. R. APP. 2 P. 52.8(a). The motion for emergency relief, which was previously carried with the case, is likewise DENIED. PER CURIAM Delivered and filed the 14th day of February, 2014. 3