

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

In re Robert Belt

No. 03-08-00381-CV · No. No. 03-08-00381-CV · Decided June 27, 2008

SUMMARY

The Texas Court of Appeals, Third District, denied a petition for writ of mandamus challenging the trial court’s order granting a new trial. The court held that the order was signed within the trial court’s plenary-power period and was therefore not void, and that mandamus would not lie from an order granting a new trial absent voidness.

CASE DETAILS

COURT	Texas Court of Appeals, Third District, at Austin
WRITING FOR THE COURT	Chief Justice Law; Justice Puryear; Justice Pemberton
JURISDICTION	Texas
DECIDED	June 27, 2008
DOCKET	No. 03-08-00381-CV
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original proceeding in which the relator petitioned for a writ of mandamus challenging the trial court's order granting the real party in interest's motion for new trial.
STANDARD OF REVIEW	Mandamus is available to review an order granting a new trial only when the order is void.
PRECEDENTIAL VALUE	Unpublished memorandum opinion; precedential effect not specified in the source text.
PARTIES	Relator v. Real party in interest

TOPICS

- appellate procedure
- motion for new trial
- remedies
- civil procedure

PRACTICE AREAS

- appellate procedure
- civil procedure
- remedies

QUESTIONS PRESENTED

1. Whether the trial court's order granting a new trial was void because it was signed outside the court's plenary-power period.
2. Whether mandamus relief may issue from an order granting a new trial when the order is not void.

HOLDINGS

1. The order granting a new trial was not void because it was signed within 105 days after the judgment was signed and therefore within the trial court's plenary power.
2. Mandamus will not lie from an order granting a motion for new trial unless the order is void.

KEY QUOTATIONS

“Because the order granting a new trial was signed within 105 days of the date the judgment was signed, the order was signed within the time of the trial court’s plenary power and is not void.” (2)

“Mandamus will not lie from an order granting a motion for new trial unless the order is void.” (2)

FACTUAL BACKGROUND

The trial court entered a judgment and subsequently granted the real party in interest's motion for new trial. The new-trial order was signed within 105 days after the judgment was signed. The relator contended that the order was void and sought mandamus relief.

PROCEDURAL HISTORY

The Travis County trial court granted the real party in interest's motion for new trial. The relator sought mandamus relief in the Texas Court of Appeals, arguing that the order was void. The court concluded that the order was signed within the trial court's plenary-power period and denied the petition.

DISPOSITION

writ_denied

CASES CITED

- In re Nguyen, 155 S.W.3d 191, 193 (Tex. App.—Tyler 2003, orig. proceeding)
- In re A.N., 126 S.W.3d 320, 323 (Tex. App.—Amarillo 2004, pet. denied)
- Harris County Hosp. Dist. v. Estrada, 831 S.W.2d 876, 879 (Tex. App.—Houston [1st Dist.] 1992, no writ)
- In re Dickason, 987 S.W.2d 570, 570-71 (Tex. 1998)
- In re Attorney General, 195 S.W.3d 264, 269 (Tex. App.—San Antonio 2006, orig. proceeding)
- In re Taylor, 113 S.W.3d 385, 393 (Tex. App.—Houston [1st Dist.] 2003, orig. proceeding)

OPINION

Sylviano Martinez-Olivares v. State

PER CURIAM.

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-08-00381-CV

In re Robert Belt

ORIGINAL PROCEEDING FROM TRAVIS COUNTY

MEMORANDUM OPINION

Relator has filed a petition for writ of mandamus, complaining of the trial court's granting of the real party in interest's motion for new trial. See Tex. R. App. P. 52.8. Because the order granting a new trial was signed within 105 days of the date the judgment was signed, the order was signed within the time of the trial court's plenary power and is not void. See *In re Nguyen*, 155 S.W.3d 191, 193 (Tex. App.—Tyler 2003, orig. proceeding); *In re A.N.*, 126 S.W.3d 320, 323 (Tex. App.—Amarillo 2004, pet. denied); *Harris County Hosp. Dist. v. Estrada*, 831 S.W.2d 876, 879 (Tex. App.—Houston [1st Dist.] 1992, no writ). Mandamus will not lie from an order granting a motion for new trial unless the order is void. See *In re Dickason*, 987 S.W.2d 570, 570-71 (Tex. 1998); *In re Attorney General*, 195 S.W.3d 264, 269 (Tex. App.—San Antonio 2006, orig. proceeding); see also *In re Taylor*, 113 S.W.3d 385, 393 (Tex. App.—Houston [1st Dist.] 2003, orig. proceeding). We deny the petition for writ of mandamus. _____

David Puryear, Justice Before Chief Justice Law, Justices Puryear and Pemberton Filed: June 27, 2008 2