

Petition for Writ of Mandamus Denied and Memorandum Opinion filed February 18, 2010



In The

Fourteenth Court of Appeals

NO. 14-10-00086-CV

IN RE BORIS TWAIN CLEWIS, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS**

MEMORANDUM OPINION

January 29, 2010, relator, Boris Twain Clewis, filed a petition for writ of mandamus in this Court. *See* Tex. Gov't Code Ann. §22.221 (Vernon 2004); *see also* Tex. R. App. P. 52. In the petition, relator asks this Court to compel the Honorable Dan Hinde, presiding judge of the 269th District Court of Harris County, to sustain his plea in abatement.¹ Relator is incarcerated in the Texas Department of Criminal Justice, Institutional Division, and is proceeding pro se.

¹ Relator's petition names the Honorable John T. Wooldridge as the respondent. However, Judge Dan Hinde is currently the presiding judge of the 269th District Court.

Relator states that he is a person interested in the *Estate of Redell Clewis, Sr.*, cause number 307,615, in Probate Court No. 3 of Harris County. Relator is the son of Redell Clewis, Sr. and is a devisee named in Clewis' will. According to relator, his father died on June 30, 1999, and the will was admitted to probate on July 16, 1999. Relator is the plaintiff in another suit pending in Probate Court No. 3 in cause no. 307,615-401, which he filed on May 21, 2001. Relator states that the estate is believed to be in excess of \$1,000,000.

On December 3, 2009, relator was served with a lawsuit in Cause No. 2009-60917 in the 269th District Court filed by Harris County to collect delinquent and ad valorem taxes in the amount of \$7,558.10. Relator filed an answer to the tax suit, along with a plea in abatement, motion to dismiss for want of jurisdiction, and/or motion to transfer to Probate Court No. 3. The certificate of service shows that relator's answer, along with the accompanying motions, was mailed to the Harris County District Clerk on December 4, 2009.

Relator received notice of the trial setting in the tax suit for February 26, 2010, in the tax master court. The scheduling order for relator's case pending in Probate Court No. 3 states that the pretrial conference is set for April 12, 2010.² Relator seeks to abate the tax suit because Probate Court No. 3 acquired dominate jurisdiction.

To be entitled to the extraordinary relief of a writ of mandamus, the relator must show that the trial court abused its discretion and he has no adequate remedy by appeal. *In re Team Rocket, L.P.*, 256 S.W.3d 257, 259 (Tex. 2008) (orig. proceeding). Relator has not shown that the trial court denied his plea in abatement or that his motion has even

² The record shows that the estate administrator filed suit in cause number 307,615-402, which also is pending in Probate Court No. 3. That case is also set for a pretrial conference on April 12, 2010.

been presented to the trial court for a ruling.³ The right to mandamus relief generally requires a predicate request for some action and a refusal of that request. *In re Perritt*, 992 S.W.2d 444, 446 (Tex. 1999) (orig. proceeding) (per curiam). Therefore, relator has not shown any abuse of discretion by the trial court. Moreover, relator's petition does not comply with the Texas Rules of Appellate Procedure. *See* Tex. R. App. P. 52.7(a)(1) (requiring relator to file with petition certified or sworn copy of every document that is material to relator's claim for relief and was filed in any underlying proceeding).

Relator has not established his entitlement to the extraordinary relief of a writ of mandamus. Accordingly, we deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Yates, Seymore, and Brown.

³ Relator's motion is not file-stamped and, therefore, he has not demonstrated that it actually has been filed in the trial court. Filing something with the district clerk does not mean the trial court is aware of it. *In re Villarreal*, 96 S.W.3d 708, 710 n.2 (Tex. App.—Amarillo 2003, orig. proceeding). Nor is the clerk's knowledge imputed to the trial court. *Id.*