

In re PEDIATRIX Med. Servs.

Court of Appeals of Texas, Fifth District, Dallas

July 28, 2005, Opinion Issued

No. 05-05-00986-CV

Reporter

2005 Tex. App. LEXIS 5861; 2005 WL 1776039

IN RE PEDIATRIX MEDICAL SERVICES, INC.,
Relator

Subsequent History: [*1] Released for
Publication August 29, 2005.

Prior History: Original Proceeding from the
193rd Judicial District Court. Dallas County,
Texas. Trial Court Cause No. DV-05-03186-L.

Disposition: Writ of Mandamus Conditionally
Granted.

Core Terms

trial judge, trial court, motion to compel
arbitration, proceedings, abused, arbitration,
relator's, mandamus proceeding, scheduling order,
writ of mandamus, further order, staying

Case Summary

Procedural Posture

Plaintiff employee filed a declaratory judgment
action regarding the validity of the covenant not
to compete in her employment contract with
relator employer. Relator's answer included a
motion to stay litigation and compel arbitration.
Relator sought a writ of mandamus directing the
trial judge in the 193rd Judicial District Court,
Dallas County, Texas, to stay the proceedings
pending disposition of the amended motion to
compel arbitration.

Overview

In this original mandamus proceeding, relator
contended the trial judge abused his discretion in
not staying the proceedings in the trial court
pending disposition of the amended motion to
compel arbitration. [Tex. Civ. Prac. & Rem. Code
Ann. § 171.025\(a\)](#) (2005) required the trial court
to stay a proceeding that involved an issue subject
to arbitration if an application for an arbitration
order was made. By not staying the proceedings in
this case pending his ruling on the amended
motion to compel arbitration, the trial judge
violated the provisions of [§ 171.025\(a\)](#). The trial
judge clearly abused his discretion.

Outcome

The relator's petition for writ of mandamus was
granted. The appellate court ordered the trial
judge to vacate the scheduling order. The trial
judge was ordered to stay the proceedings in the
trial court pending disposition of the amended
motion to compel arbitration. The trial judge was
directed to file a certified copy of the order.

LexisNexis® Headnotes

Civil Procedure > Remedies > Writs > General
Overview

Civil Procedure > ... > Writs > Common Law
Writs > Mandamus

Civil Procedure > Appeals > Standards of Review >
Abuse of Discretion

Civil Procedure > ... > Standards of Review >
Harmless & Invited Errors > General Overview

Civil Procedure > Appeals > Standards of Review > Prejudicial Errors

HN1 A writ of mandamus will issue only if the trial court has clearly abused its discretion and the relator has no adequate remedy at law. A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law or it clearly fails to correctly analyze or apply the law.

Civil Procedure > Judicial Officers > Judges > Discretionary Powers

Civil Procedure > ... > Alternative Dispute Resolution > Arbitration > General Overview

Civil Procedure > Pretrial Matters > Alternative Dispute Resolution > Mandatory ADR

Civil Procedure > ... > Entry of Judgments > Stays of Judgments > General Overview

HN2 [Tex. Civ. Prac. & Rem. Code Ann. § 171.025\(a\)](#) (2005) provides that the trial court shall stay a proceeding that involves an issue subject to arbitration if an application for an arbitration order is made.

Counsel: For RELATOR: Mr. William Brent Shellhorse, Hunter T. McLean, John Allen Chalk, WHIATKER, CHALK, SWINDLE & SAWYER, L.L.P., Fort Worth, TX.

For RESPONDENT: Judge, 193rd JUDICIAL DISTRICT COURT, Dallas, TX.

For REAL PARTIES: Darrell Wayne Cook, Caren Lock Hanson, DARRELL W. COOK & ASSOCIATES, P.C., Dallas, TX.

Judges: Before Justices Wright, O'Neill, and Lang. Opinion by Justice Wright.

Opinion by: CAROLYN WRIGHT

Opinion

MEMORANDUM OPINION

Opinion by Justice Wright

In this original mandamus proceeding, relator Pediatrix Medical Services, Inc. contends the trial judge abused his discretion in not staying the proceedings in the trial court pending disposition of the amended motion to compel arbitration. We agree, and conditionally grant the writ of mandamus.

Moody filed a declaratory judgment action regarding the validity of the covenant not to compete in her employment contract with relator. Relator's answer included a motion to stay litigation and compel expedited arbitration. Moody filed a motion for summary judgment on May 3, 2005. On May 18, 2005, relator, through new counsel, filed an amended motion to compel arbitration. The associate judge granted the motion to compel on May 27, 2005 and Moody appealed that decision. [*2] In a May 31, 2005 scheduling order, the trial judge stated that the motions would be heard in the order in which they were filed. We stayed the proceedings in the trial court pending resolution of the mandamus proceeding.

HN1 A writ of mandamus will issue only if the trial court has clearly abused its discretion and the relator has no adequate remedy at law. *See Walker v. Packer, 827 S.W.2d 833, 839-40, 35 Tex. Sup. Ct. J. 468 (Tex. 1992).* A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law" or it clearly fails to correctly analyze or apply the law. *Id.*

HN2 The civil practices and remedies code provides that the trial court shall stay a proceeding that involves an issue subject to arbitration if an application for an arbitration order is made. *See TEX. CIV. PRAC. & REM. CODE ANN. § 171.025(a)* (Vernon 2005). By not staying the

proceedings in this case pending his ruling on the amended motion to compel arbitration, the trial judge violated the provisions of [section 171.025\(a\)](#). Therefore, we conclude the trial judge clearly abused his discretion.

We conditionally grant relator's petition for writ of [*3] mandamus. We order the trial judge to vacate the May 31, 2005 scheduling order. We further order the trial judge to stay the proceedings in the trial court pending disposition of the

amended motion to compel arbitration. ¹ *See id.* We further order the trial judge to file with this Court, within thirty days of the date of this order, a certified copy of the order in compliance with this order. Should the trial court fail to comply, the writ will issue.

CAROLYN WRIGHT

JUSTICE

¹ In granting relief, we specifically note that we are not telling the trial judge what ruling he should make on relator's motion to compel arbitration. We only order that the judge stay the trial court proceedings pending disposition of the amended motion to compel arbitration.