

Dismissed; Opinion Filed July 13, 2017.



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00465-CV

IN THE INTEREST OF B.T.G., A CHILD

On Appeal from the 302nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-12-12707

MEMORANDUM OPINION

Before Justices Lang, Myers, and Stoddart
Opinion by Justice Stoddart

Appellant, Terrence Gore, seeks to appeal a trial court order expunging a notice of lis pendens in favor of appellee, Rachael Gore, and the trial court's denial of appellant's request to dismiss appellee's motion to expunge. By letter dated June 7, 2017 this Court notified appellant of our concern that we lack jurisdiction over this appeal because neither of the challenged orders appeared to be appealable. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001).

At our request, appellant filed a jurisdictional letter brief addressing our concern. Citing to three different appellate court opinions¹, he acknowledges that orders concerning the propriety of a notice of lis pendens are reviewed by mandamus. He states, though, that he filed this appeal after we denied a petition for writ of mandamus he filed complaining of the same orders. *See In*

¹ *In re Cohen*, 340 S.W.3d 889, 900 (Tex. App.—Houston [1st Dist.] 2011, orig. proceeding); *In re Mousa*, No. 01-04-00485-CV, 2004 WL 2823172, at *2 (Tex. App.—Houston [1st] Dec. 9, 2004, (orig. proceeding) (mem. op.); *Nwangwu v. Dinkins*, No. 14-97-01100-CV, 1997 WL 688943, at *1 (Tex. App.—Houston[14th Dist.] Nov. 6, 1997, (orig. proceeding) (mem. op.).

re Gore, 05-17-00444-CV, 2017 WL 1684663, at *1 (Tex. App.—Dallas May 2, 2017, no pet.). Appellant asserts that, in denying his petition, we concluded he “had adequate remedy of appeal.” Appellant, however, misstates our conclusion. In denying the petition, we stated he had “not shown he is entitled to the relief requested,” a burden requiring he show not only that he has no adequate appellate remedy but also that the trial court clearly abused its discretion. *See id.* (“To be entitled to mandamus relief, a relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135-36 (Tex. 2004) (orig. proceeding)).

Because the challenged orders are not appealable, we dismiss the appeal.² *See* TEX. R. APP. P. 42.3(a).

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/Craig Stoddart/
CRAIG STODDART
JUSTICE

² Appellant asks that, if we “agree[] that a petition for writ of mandamus is appropriate,” we “reinstate his original petition for mandamus.” We deny the request.



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

IN THE INTEREST OF B.T.G., A CHILD

No. 05-17-00465-CV

On Appeal from the 302nd Judicial District
Court, Dallas County, Texas
Trial Court Cause No. DF-12-12707.
Opinion delivered by Justice Stoddart.
Justices Lang and Myers participating.

In accordance with this Court's opinion of this date, the appeal is **DISMISSED**.

Judgment entered this 13th day of July, 2017.