

Conditionally granted and Opinion Filed August 24, 2017



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00834-CV

IN RE WALTER JOHN STANTON, III, Relator

Original Proceeding from the 193rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-07601

MEMORANDUM OPINION

Before Justices Lang-Miers, Evans, and Stoddart
Opinion by Justice Evans

In this original proceeding, relator complains of a trial court order requiring relator to appear for a deposition on the merits of the claims against him before the court hears and decides relator's special appearance. The facts are well known to the parties so we need not recite them here. 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). A clear failure by the trial court to analyze or apply the law correctly constitutes an abuse of discretion. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992); *In re Tex. Am. Express, Inc.*, 190 S.W.3d 720, 724 (Tex. App.—Dallas 2005, orig. proceeding). We conditionally grant the relief requested.

Texas Rule of Civil Procedure 120a provides that any party may file a special appearance “for the purpose of objecting to the jurisdiction of the court over the person or property of the defendant on the ground that such party or property is not amenable to process issued by the

courts of this State.” TEX. R. CIV. P. 120a(1). The party bringing the special appearance is entitled to have it heard and decided before any other pleading. TEX. R. CIV. P. 120a(2). Although rule 120a(3) specifically provides for jurisdictional discovery, discovery “is limited to matters directly relevant to the issue” of jurisdiction. TEX. R. CIV. P. 120a(3); *Stanton v. Gloersen*, No. 05-16-00214-CV, 2016 WL 7166550, at *6 (Tex. App.—Dallas Nov. 30, 2016, pet. denied) (mem. op.) (citing *In re Doe*, 444 S.W.3d 603, 608 (Tex. 2014) (orig. proceeding)). A court should not reach the merits of the case when deciding a special appearance. *See Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 791–92 (Tex. 2005).

Here, the trial court granted the real parties in interest’s request to proceed with merits discovery during the pendency of relator’s special appearance, overruled relator’s objections “to the taking of merits-based discovery from him prior to hearing and ruling on his Special Appearance set for August 14, 2017,” and ordered relator’s deposition take place before the special appearance hearing. Rule 120a requires discovery be limited to matters relevant to jurisdiction prior to a ruling on a special appearance. *In re Doe*, 444 S.W.3d at 608; *Stanton*, 2016 WL 7166550, at *6; *In re Stern*, 321 S.W.3d 828, 840 (Tex. App.—Houston [1st Dist.] 2010, orig. proceeding). The trial court abused its discretion by issuing an order contrary to this well-established law.

Accordingly, we conditionally grant the petition for writ of mandamus. We order the trial court to make written rulings within fifteen (15) days of the date of this opinion vacating the portion of the trial court’s July 11, 2017 order mandating that relator’s deposition be taken on the merits at any time prior to the decision on his special appearance and ordering that relator’s deposition be limited to matters directly relevant to the issue of jurisdiction if the deposition is

taken before the trial court rules on relator's special appearance. A writ will issue only if the trial court fails to comply with this opinion and the order of this date.

/s/David Evans/

DAVID EVANS
JUSTICE

170834F.P05