

Supreme Court of Texas

No. 23-0685

In re Gulley-Hurst L.L.C.,

Relator

On Petition for Writ of Mandamus

PER CURIAM

This mandamus petition complains of a turnover order issued by the trial court. Because the petitioner has an adequate remedy by appeal, we deny the petition.

The mandamus petition was filed by relator Gulley-Hurst, who prevailed in an earlier appeal in this Court concerning the damages it owed MSW Corpus Christi Landfill for breach of contract. *See MSW Corpus Christi Landfill, Ltd. v. Gulley-Hurst, L.L.C.*, 664 S.W.3d 102 (Tex. 2023). As requested by Gulley-Hurst, our judgment reversed the court of appeals' judgment in part and rendered a take-nothing judgment as to the lost opportunity cost damages awarded to MSW by the trial court. Gulley-Hurst represented to the Court in that proceeding that "[b]ased on the remainder of the judgments below, MSW would take nothing, and Gulley-Hurst should be awarded its attorney's

fees as stipulated in the trial court.” Gulley-Hurst did not file a timely motion for rehearing or motion to modify our judgment.

Back in the trial court, things did not go according to Gulley-Hurst’s plan. MSW claimed that it was still entitled to attorney’s fees, court costs, and interest awarded in the trial court’s original judgment, and it filed an abstract of judgment. Gulley-Hurst then filed a motion with this Court in connection with its original appeal, asking us to order under Texas Rule of Appellate Procedure 60.6 that MSW was not entitled to enforce the awards. We denied the motion.

MSW then obtained a turnover order against Gulley-Hurst in the trial court. In response, Gulley-Hurst filed this mandamus petition in our Court, asking us to vacate the turnover order as an abuse of discretion given that our judgment in the prior appeal eliminated all damages recovered by MSW.

Turnover orders are ordinarily final, appealable orders. *Burns v. Miller, Hiersche, Martens & Hayward, P.C.*, 909 S.W.3d 505, 506 (Tex. 1995). Therefore, with some exceptions, they must be attacked on direct appeal rather than by mandamus. *E.g., In re Great N. Energy, Inc.*, 493 S.W.3d 283, 288-89 (Tex. App.—Texarkana 2016, orig. proceeding). Gulley-Hurst identifies no exception to this principle that applies here.

In any event, it appears that the trial court’s turnover order and Gulley-Hurst’s petition are premature. Our judgment in the prior appeal did not foreclose—and the trial court should conduct—further proceedings regarding the availability of attorney’s fees and costs in light of our disposition of the appeal and the parties’ stipulation. Gulley-Hurst has an adequate remedy by appeal from those proceedings.

We therefore deny the petition for writ of mandamus. We lift our stay order issued August 28, 2023.

OPINION DELIVERED: February 2, 2024