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As of: August 16, 2022 4:17 PM Z

In re Allstate Fire & Cas. Ins. Co.

Court of Appeals of Texas, Fifth District, Dallas

May 24, 2021, Opinion Filed

No. 05-20-00801-CV

Reporter

2021 Tex. App. LEXIS 4051 *; 2021 WL 2070207

IN RE ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY AND LATINA FOSTER, Relators

Prior History: [*1] Original Proceeding from the County Court at Law **No.** 5, Dallas County, Texas. Trial Court Cause **No.** CC-20-00179-E.

[In re Allstate Fire & Cas. Ins. Co., 2021 Tex. App. LEXIS 2767 \(Tex. App. Dallas, Apr. 12, 2021\)](#)

Core Terms

trial court, deposition, discovery, special exception, mandamus relief, writ petition, mandamus, abused, orig

Counsel: For Rachel Levine, Real party in interest: Kirk L. Pittard, Lana Beverly, Durham, Pittard & Spalding, LLP, Dallas TX; Thomas Allen Herald, Lead counsel, Thomas A. Herald, P.C., Carrollton TX.

For Allstate Fire and Casualty Insurance Company and Latina Foster, Relator: Clinton David Howie, Lead counsel, David G. Allen, Stacy & Conder, LLP, Sabena Talati, Stacy Conder Allen LLP, Dallas TX.

Judges: Before Justices Osborne, Reichek, and Smith. Opinion by Justice Smith.

Opinion by: CRAIG SMITH

Opinion

MEMORANDUM OPINION ON REHEARING

Opinion by Justice Smith

On the Court's own motion, we withdraw our opinion and order of April 12, 2021. The following is now the opinion of the Court.

Before the Court are relators' petition for writ of mandamus, real party's response, and relators' reply to the response. Relators contend they are entitled to mandamus relief because the trial court abused its discretion by denying their special exceptions complaining about real party's failure to plead a claim for breach of contract, and by failing to quash relator Latina Foster's deposition and limit the scope of discovery because Foster's deposition and any additional discovery regarding relators' handling of the claim are premature. Entitlement to mandamus relief requires relators to show both that the trial court clearly abused its discretion and that relators have no adequate appellate remedy. [In re Prudential Ins. Co., 148 S.W.3d 124, 135-36 \(Tex. 2004\)](#) (orig. proceeding). Although we question the scope of the identified deposition topics and discovery requests, based [*2] on relators' arguments and the record, we conclude relators have failed to show a clear abuse of discretion. Further, in light of the Texas Supreme Court's recent opinion in [In re State Farm Mutual Automobile Insurance Company, No. 19-0791, 2021 Tex. LEXIS 222, 2021 WL 1045651 \(Tex. Mar. 19, 2021\)](#) (orig. proceeding), the trial court did not abuse its discretion by denying relators' special exceptions. *Id.* (concluding insurer not required to plead a breach of contract claim to recover for extra-contractual claims).

According, we deny relators' petition for writ of mandamus.

/s/ Craig Smith

CRAIG SMITH

JUSTICE

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