DENY and Opinion Filed April 12, 2021

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-20-00801-CV

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

Original Proceeding from the County Court at Law No. 5
Dallas County, Texas
Trial Court Cause No. CC-20-00179-E

MEMORANDUM OPINION

Before Justices Osborne, Reichek, and Smith
Opinion by Justice Smith

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 because it is 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,

based 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 Co.*, No. 19-0791, 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.

/Craig Smith/
CRAIG SMITH
JUSTICE

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