

**COWLES AND THOMPSON SUCCEEDS IN OBTAINING EXTRAORDINARY
RELIEF FROM THE COURT OF APPEALS ORDERING CLAIMS AGAINST
FORMER EMPLOYEES TO PROCEED**

Dallas, TX (September 30, 2020) -- Cowles and Thompson achieved a recent success on behalf of clients, Amarillo Urgent Care, LLC and Naeem Khan, M.D., Relators. The Amarillo Court of Appeals granted a petition for writ of mandamus directing the 181st District Court, Potter County, Texas, to vacate its July 13, 2020 order staying a state court lawsuit because of an ongoing, Fair Labor Standards Act (FLSA) lawsuit in the Northern District of Texas, Amarillo Division, between the same parties. During the federal lawsuit, Amarillo Urgent Care and Dr. Khan brought state law claims against the former employees for breach of contract, tortious interference, and breach of fiduciary duty. Litigation attorney, Casey Erick, is overseeing the trial phase of the state and federal court lawsuits and partnered with appellate attorney, Mike Northrup, who handled the petition for writ of mandamus filed in the court of appeals.

Background

Darrell Kimbrough, Mary Benard, and Tina Spohn-Ledford brought FLSA claims against Amarillo Urgent Care and Dr. Khan, for allegedly failing to pay overtime. The federal case is still pending in the Northern District of Texas, Amarillo Division and set for trial on March 2, 2021.

In February 2020, Amarillo Urgent Care and Khan sued Kimbrough, Benard, and Spohn-Ledford in state district court for breach of contract, tortious interference, and breach of fiduciary duty because they each breached their employment contracts by violating the non-compete agreement, failing to complete patient charts or performing their respective duties, failing to follow the clinic's policies regarding patient safety, violating the Health Insurance Portability and Accountability Act (HIPAA), jeopardizing patient safety, diverting patients away from the clinic, and

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disparaging the clinic and Dr. Khan. Subsequently, the former employees urged the trial court to stay the state court suit on the asserted basis that the actions were filed as retaliation for their pursuit of FLSA claims in federal court. The trial court granted the former employees' motion to stay. The court's order prohibited Amarillo Urgent Care and Khan from proceeding further in state court "until final resolution, including any rights of appeal, of the claims asserted" against Amarillo and Dr. Khan in federal court.

Writ of Mandamus Filed in the Court of Appeals

Because a writ of mandamus is a tool filed with a court of appeals and used to secure extraordinary equitable relief against a trial judge, a party must meet specific criteria before such relief is granted. The requirements are:

- 1) A clear abuse of discretion on the part of the trial judge, and
- 2) The lack of a(nother) adequate legal remedy.

Because the trial judge's order included phrasing that the stay of the proceedings would continue until the "final resolution" of the federal FLSA lawsuit, the appeals court determined a) that the wording precluded any rights of appeal of the state-court stay order and b) designated the stay's duration to be indefinite. Thus, the order left Amarillo Urgent Care and Khan without the means to attack the trial court's decision in a meaningful way – other than by a writ of mandamus.

Abuse of Discretion

To support the trial judge's stay order, the former employees relied on a prior case, [*Martinez v. Deaf Smith Co. Grain Processors, Inc.*](#), which had recognized that the filing of a lawsuit against former employees could constitute retaliation in some contexts. However, the appeals court here noted that *Martinez* involved a federal court making use of injunctive relief based upon a finding of prohibited retaliation. In the case of Amarillo Urgent Care and Khan, there was no federal court issuing an injunction and there was no finding or evidence to show Amarillo Urgent Care or Khan had engaged in acts of retaliation.

Outcome

The Amarillo Court of Appeals determined that Amarillo Urgent Care and Khan had established a clear abuse of discretion by the trial judge and an absence of adequate legal remedy, and it therefore granted the writ of mandamus. The appeals court set forth its opinion September 24, 2020, directing the trial court to vacate its order from July 13, 2020 – which would remove the stay and permit the state-court claims against the former employees to move forward.

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The Team

[Casey Erick](#) represents clients in both litigation and transactional matters that span across commercial law, labor and employment, real estate, consumer protection, and general litigation including breach of contract, corporate trade secret theft, tortious interference, defamation, personal injury, fraud, and various other kinds of civil litigation.

[R. Michael \(Mike\) Northrup](#) leads the Cowles and Thompson Appellate team. He practices in both trial and appellate courts in a range of matters including personal injury, insurance issues, employment law, commercial disputes, and zoning disputes.

Cowles and Thompson

Cowles and Thompson, LLC is a full-service law firm with offices in Dallas and Plano, Texas. Established in 1978, the firm has long served the Dallas-Fort Worth region, Texas, and the nation. Cowles and Thompson attorneys strive to provide effective, creative, efficient solutions for their clients' most complex problems, including critical litigation and appeals, employment, business formation and transactions, creditor's rights and family law.

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