

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 19, 2016

Elisabeth A. Shumaker  
Clerk of Court

MARY JULIA HOOK,

Petitioner,

v.

LNV CORPORATION,

Respondent.

UNITED STATES OF AMERICA;  
PRUDENTIAL HOME MORTGAGE  
COMPANY, INC.; SAINT LUKES  
LOFTS HOMEOWNER ASSOCIATION,  
INC.; DEBRA JOHNSON, in her official  
capacity as the Public Trustee of the City  
and County of Denver, Colorado; DAVID  
LEE SMITH,

Defendants.

No. 16-1020  
(D.C. No. 1:14-CV-00955-RM-CBS)  
(D. Colo.)

**ORDER**

Before **KELLY, MATHESON, and BACHARACH**, Circuit Judges.

Petitioner Mary Julia Hook, an attorney proceeding pro se, has filed a petition for writ of mandamus or prohibition seeking reversal of two orders of the district court denying her motion to compel discovery from respondent in the underlying litigation. Respondent has asserted that the matters petitioner seeks to discover are covered by the attorney-client and/or the attorney-work-product privilege. After allowing respondent to

cure deficiencies in its privilege log, the district court rejected petitioner's challenges to the log and concluded that the magistrate judge did not abuse his discretion in denying petitioner's motion to compel. Petitioner contends that the district court applied the wrong legal standards in judging whether the asserted privileges existed and whether they were either waived or subject to the crime/fraud exception. Accordingly, she asks us to reverse the district court's orders.

“Mandamus is not the same as, nor is it a substitute for, a direct appeal.” *In re Motor Fuel Temperature Sales Practices Litig.*, 641 F.3d 470, 487 (10th Cir. 2011). To obtain a writ of mandamus or prohibition, petitioner must show that she has both a clear and indisputable entitlement to the relief she seeks and no other adequate means to secure it. *Feinberg v. Comm’r*, 808 F.3d 813, 815 (10th Cir. 2015). “And even if [she] can satisfy these two requirements, [she] still must convince this court that exercising its discretion to intervene in an ongoing trial court proceeding is appropriate in the interests of justice.” *Id.* (internal quotation marks omitted).

Petitioner has not made the required showing. First and foremost, she has an adequate alternate remedy because she can appeal the district court's rulings at the conclusion of the case. *See, e.g., Motley v. Marathon Oil Co.*, 71 F.3d 1547, 1550 (10th Cir. 1995) (reviewing denial of motion to compel on appeal). Petitioner is not in the same position as a party who seeks to *avoid* discovery of material it claims is privileged. *Cf. Barclaysamerican Corp. v. Kane*, 746 F.2d 653, 654 (10th Cir. 1984) (recognizing that a writ of mandamus may be issued to vacate a district court's discovery order requiring the *disclosure* of privileged information).

The petition for writ of mandamus or prohibition is denied. Petitioner's motion to proceed in this matter without the prepayment of costs and fees is granted. Though not obligated to prepay the filing fee, petitioner is reminded that she still remains obligated to pay the filing fee in full. Petitioner's request to be relieved of the obligation to file with the court paper copies of the documents she has filed electronically is granted.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", with a long horizontal flourish extending to the right.

ELISABETH A. SHUMAKER, Clerk