



**Fourth Court of Appeals**  
**San Antonio, Texas**

**OPINION**

No. 04-21-00456-CV

**IN RE Sondra GROHMAN**

Original Mandamus Proceeding<sup>1</sup>

Opinion by: Liza A. Rodriguez, Justice

Sitting: Rebeca C. Martinez, Chief Justice  
Patricia O. Alvarez, Justice  
Liza A. Rodriguez, Justice

Delivered and Filed: January 26, 2022

**PETITION FOR WRIT OF MANDAMUS CONDITIONALLY GRANTED**

At issue in this mandamus proceeding is whether the trial court abused its discretion in ordering Relator Sondra Grohman to submit to a mental health examination in the underlying divorce proceeding. Because we hold that the trial court abused its discretion in so ordering, we conditionally grant Grohman's petition for writ of mandamus.

**MANDAMUS STANDARD**

Mandamus relief is appropriate when the relator shows (1) the trial court abused its discretion, and (2) no adequate appellate remedy exists. *In re H.E.B. Grocery Co.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding); *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). A trial court that fails to comply with Texas Rule of Civil Procedure 204.1 in

---

<sup>1</sup> This proceeding arises out of Cause No. 15705, styled *In the Matter of the Marriage of Sondra Grohman and Larry Wegner*, pending in the 216th Judicial District Court, Gillespie County, Texas, the Honorable Albert D. Pattillo, III presiding.

compelling a plaintiff to submit to a mental examination abuses its discretion. *See In re Jane Doe*, 22 S.W.3d 601, 604-05 (Tex. App.—Austin 2000, orig. proceeding); *see also In re H.E.B. Grocery*, 492 S.W.3d at 305 (conditionally granting petition for writ of mandamus because trial court abused its discretion in denying H.E.B.’s motion for a physical examination). Further, a person who is erroneously ordered to submit to a mental health examination would have no adequate remedy at law because once a person’s “privacy has been violated, it cannot be restored.” *Spear v. Gayle*, 857 S.W.2d 122, 126 (Tex. App.—Houston [1st Dist.] 1993, orig. proceeding). “The damage will have been done.” *Id.*

#### FACTUAL BACKGROUND

In the underlying proceeding, Grohman has sued her husband Larry Wegner for divorce. In her first amended petition, she added a claim against Wegner for assault, alleging that he had caused her bodily injury. Later, on September 1, 2021, the trial court signed a docket control order, stating that the deadline to file all dispositive motions was September 30, 2021, and that the cause was set for trial on November 8, 2021. On September 8, 2021, Grohman filed a Second Amended Petition for Divorce, in which she added a claim for intentional infliction of emotional distress against Wegner. She alleged that her emotional distress was “severe” and that she suffered from past mental anguish and would suffer from future mental anguish. While she amended her petition again on September 20th and 28th, her claims for assault and for intentional infliction of emotional distress remained.

On October 7, 2021, Wegner filed a motion for mental health examination, arguing that based on Grohman’s claims for assault and intentional infliction of emotional distress, he was entitled to have her submit to a mental examination under Rule 204.1. At the hearing on October 15, 2021, Wegner did not introduce any evidence. The trial court granted his motion and ordered

Grohman to submit to a mental examination by November 2, 2021. On October 22, 2021, Grohman filed this petition for writ of mandamus, along with a motion for emergency relief.

### MENTAL HEALTH EXAMINATION

Texas Rule of Civil Procedure 204.1 governs requests for the physical or mental examination of another party:

- (a) **Motion.** A party may—no later than 30 days before the end of any applicable discovery period—move for an order compelling another party to:
  - (1) submit to a physical or mental examination by a qualified physician or a mental examination by a qualified psychologist; or
  - (2) produce for such examination a person in the other party’s custody, conservatorship or legal control.
- (b) **Service.** The motion and notice of hearing must be served on the person to be examined and all parties.
- (c) **Requirements for Obtaining Order.** The court may issue an order for examination *only for good cause shown* and only in the following circumstances:
  - (1) when the mental or physical condition (including the blood group) of a party, or of a person in the custody, conservatorship or under the legal control of a party, is in controversy; *or*
  - (2) except as provided in Rule 204.4, an examination by a psychologist may be ordered when the party responding to the motion has designated a psychologist as a testifying expert or has disclosed a psychologist’s records for possible use at trial.<sup>2</sup>
- (d) **Requirements of Order.** The order must be in writing and must specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

TEX. R. CIV. P. 204.1 (emphasis added). Thus, a trial court “may grant a Rule 204.1 motion if the movant establishes that (1) ‘good cause’ exists for the examination, and (2) the mental or physical condition of the party the movant seeks to examine ‘is in controversy.’” *In re H.E.B. Grocery*, 492 S.W.3d at 303 (quoting TEX. R. CIV. P. 204.1(c)). “The purpose of Rule 204.1’s good-cause

---

<sup>2</sup> Grohman has not designated a psychologist as a testifying expert. Further, there was no evidence at the Rule 204.1 hearing that Grohman had disclosed a psychologist’s records for possible use at trial.

requirement is to balance the movant's right to a fair trial and the opposing party's right to privacy." *Id.*

The movant has the burden to show he is entitled to a motion under Rule 204.1. *See* TEX. R. APP. P. 204.1; *In re H.E.B. Grocery*, 492 S.W.3d at 303. "To show good cause, the movant must (1) show that the requested examination is relevant to issues in controversy and will produce or likely lead to relevant evidence, (2) establish a reasonable nexus between the requested examination and the condition in controversy, and (3) *demonstrate that the desired information cannot be obtained by less intrusive means.*" *In re H.E.B. Grocery*, 492 S.W.3d at 303. (emphasis added).

Here, Grohman argues that because Wegner did not submit any evidence at the hearing on his motion, he has failed in his burden to show that the desired information cannot be obtained by less intrusive means and thus has failed to show good cause under Rule 204.1. In response, Wegner points to no evidence he submitted at the hearing supporting the "good cause" requirement, but instead simply argues that the "existence of less intrusive options are measured in light of what would provide a fair trial standard." In support of this assertion, he cites this court's opinion in *In re Phoenix Services, LLC*, No. 04-18-00446-CV, 2018 WL 5622049 (Tex. App.—San Antonio Oct. 31, 2018, orig. proceeding). In *Phoenix Services*, we stated that a movant in a Rule 204.1 motion "must demonstrate that the information sought is required to obtain a fair trial and therefore necessitates intrusion upon the privacy of the person he seeks to have examined." *Id.* at \*2. We reiterated that a plaintiff's "privacy interests require, at minimum, that [the defendant] exhaust less intrusive means of discovery before seeking a compulsory mental examination." *Id.* "If, however, a plaintiff *intends to use expert medical testimony* to prove his or her alleged mental condition, that condition is placed in controversy and the defendant would have good cause for an examination." *Id.* (emphasis added). This statement in *Phoenix* does not apply to the facts here, as

Grohman has not designated any expert to give medical testimony. Thus, Wegner was required to show that information he desired could not be obtained through less intrusive means.

“Texas courts have identified a number of avenues that could, in appropriate cases, potentially provide less intrusive means for obtaining medical information without an examination.” *In re Ten Hagen Excavating, Inc.*, 435 S.W.3d 859, 869-70 (Tex. App.—Dallas 2014, orig. proceeding). “For instance, less intrusive measures might include deposing the opposing party’s doctors and attempting to obtain copies of medical records[,] or relying on existing expert witness reports already filed in the case[.]” *Id.* at 870 (citations omitted). However, “[i]n many cases the treating physician’s notes, the medical records of the complaining party, and expert witness reports filed by other parties cannot serve these legitimate purposes.” *Id.* “In addition, where the information already available through less intrusive means is inadequate, a party may obtain a physical examination for which good cause is otherwise shown.” *Id.*

The record of the hearing shows that Wegner made no effort to show that he could not obtain the information he sought through less intrusive means. There was simply no evidence presented at the hearing as to what less intrusive means Wegner had attempted. Thus, Wegner failed to show good cause pursuant to Rule 204.1, and the trial court abused its discretion in granting his motion.

#### CONCLUSION

We conclude the trial court abused its discretion by compelling Grohman to submit to a mental health examination without requiring Wegner to show good cause under Rule 204.1. Therefore, we conditionally grant Grohman’s petition for writ of mandamus and direct the trial court to vacate its October 18, 2021 order no later than fifteen days from the date of this opinion.

Liza A. Rodriguez, Justice