

VIRGIE ARTHUR,

Plaintiff,

v.

HOWARD K. STERN, BONNIE STERN, LYNDAL HARRINGTON, ART HARRIS, NELDA TURNER, TERESA STEPHENS, LARRY BIRKHEAD, HARVEY LEVIN, TMZ PRODUCTIONS, INC., and CBS STUDIOS, INC.

Defendants.

§ IN THE DISTRICT COURT OF
§
§ HARRIS COUNTY, TEXAS
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§ 80th JUDICIAL DISTRICT
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**REPLY IN SUPPORT OF
DEFENDANT HOWARD K. STERN’S MOTION FOR ENTRY OF ORDER
VACATING DISCOVERY ORDER DATED MAY 11, 2009**

COMES NOW Defendant Howard K. Stern (“Stern”) and, subject to and without waiver of his special appearance, hereby files this Reply in Support of Motion for Entry of Order Vacating Discovery Order dated May 11, 2009, showing the Court as follows:

Arthur is incorrect about the Court of Appeals issuing a mandate after granting mandamus relief. Appellate courts issue mandates after *judgments*, not *opinions*. See Tex. R. App. P. 18.1 (“The clerk of the appellate court that rendered the judgment must issue a mandate in accordance with the judgment . . .”).

While it is certainly permissible for Arthur to file a motion for rehearing under Texas Rule of Appellate Procedure 52.9, that has nothing to do with the fact that the Court of Appeals has *ordered* the trial court to take certain action. If the Court of Appeals were to hypothetically vacate its order granting mandamus relief on appeal – an exceptionally unlikely scenario – the trial court could simply reinstate its previous order. The filing of a motion for rehearing, however, should not stall this Court’s compliance with the Court of Appeals’ order.

WHEREFORE, PREMISES CONSIDERED, Defendant Howard K. Stern respectfully prays that this Court VACATE its discovery order against Stern issued on May 11, 2009.

Dated: July 29, 2010.

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By: /s/ L. Lin Wood

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CERTIFICATE OF SERVICE

I certify that on this day a true copy of the above Reply in Support of Defendant Howard K. Stern's Motion for Entry of Order Vacating Discovery Order dated May 11, 2009, has been sent by email and US Mail to:

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