

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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May 07, 2021

Jesse Panuccio
Boies Schiller & Flexner, LLP
401 E LAS OLAS BLVD STE 1200
FORT LAUDERDALE, FL 33301

Appeal Number: 21-11239-D
Case Style: In re: Elisabeth Devos
District Court Docket No: 2:21-mc-14073-JEM

The enclosed copy of this Court's Order of Dismissal is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Scott O'Neal, D
Phone #: (404) 335-6189

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-11239-D

In re: ELISABETH DEVOS,

Petitioner

On Petition for a Writ of Mandamus to the United States
District Court for the Southern District of Florida

BEFORE: ROSENBAUM, JILL PRYOR, and BRASHER, Circuit Judges.

BY THE COURT:

Before the Court is a petition for a writ of mandamus filed by Petitioner Elisabeth DeVos. The petition seeks a writ of mandamus directing the district court to reverse a transfer order issued by the magistrate judge below, deny the respondents' motion to transfer a motion to quash to a different district court under Fed. R. Civ. P. 45(f), and grant the petitioner's motion to quash a subpoena for her deposition. On direction from this Court, the respondents filed responses to the petition. The district judge declined to file a response.

A writ of mandamus is "a drastic and extraordinary remedy reserved for really extraordinary causes amounting to a judicial usurpation of power or a clear abuse of discretion." *In re Wellcare Health Plans, Inc.*, 754 F.3d 1234, 1238 (11th Cir. 2014) (quotation marks omitted). The writ is available "only . . . when no other adequate means [of remedy] are available." *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997) (quotation marks omitted). This "condition [is] designed to ensure that the writ will not be used as a substitute for the regular appeals process." *Rohe v. Wells Fargo Bank, N.A.*, 988 F.3d 1256, 1267 (11th Cir. 2021) (citing

Cheney v. U.S. Dist. Court, 542 U.S. 367, 380 (2004)). The petitioner has the burden of showing that she has no other avenue of relief and that her right to relief is “clear and indisputable.” *Mallard v. United States District Court*, 490 U.S. 296, 309 (1989).

The petitioner raises three arguments. First, she argues that the magistrate judge improperly exercised the judicial power and the district judge failed to exercise the necessary jurisdiction. Second, she argues that the district court abused its discretion in ordering a transfer. Third, she argues that the district court abused its discretion in refusing to enforce Rule 45’s duty to avoid undue burden.

Addressing the petitioner’s first argument, the petitioner has not met her burden to show that her right to relief is clear and indisputable. Because she did not meet her burden on her first argument, this Court lacks jurisdiction to consider her remaining arguments. *See In re Southwestern Mobile Homes, Inc.*, 317 F.2d 65, 66 (5th Cir. 1963); *Roofing and Sheet Metal Servs, Inc. v. LaQuinta Motor Inns, Inc.*, 689 F.2d 982, 988 n.10 (11th Cir. 1982). The petition for a writ of mandamus is DENIED.

BRASHER, Circuit Judge, concurring:

I agree that the petition does not meet the extraordinarily high standard for issuing a writ of mandamus. The only issue before us is whether the district court erred in declining to request the return of the transferred case so that the petitioner's objections to the magistrate judge's order could be addressed in a more orderly fashion. See *Roofing and Sheet Metal Servs, Inc. v. LaQuinta Motor Inns, Inc.*, 689 F.2d 982, 988 n.10 (11th Cir. 1982). Accordingly, the Court's decision to deny the mandamus petition says nothing about the merits of the magistrate judge's transfer order or the petitioner's objections to the subpoena. Speaking only for myself, I believe the order to transfer was erroneous and that the subpoena should be quashed. But, assuming the petitioner raises these arguments again in the transferee court, that court must be the one to rule on those issues.