

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

November 20, 2018

Elisabeth A. Shumaker
Clerk of Court

In re: KENNETH P. KELLOGG;
RACHEL KELLOGG; KELLOGG
FARMS, INC.; ROLAND B. BROMLEY;
BROMLEY RANCH, LLC,

Petitioners.

No. 18-3220
(D.C. No. 2:18-cv-02408-JWL-JPO)
(D. Kan.)

ORDER

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

Petitioners seek a writ of mandamus to reverse an order of the Judicial Panel on Multidistrict Litigation (“JPML”) that transferred their putative class action suit filed in the United States District Court for the District of Minnesota, *Kellogg v. Watts Guerra, LLP*, No. 18-cv-1082-DWF-BRT, to *In re: Syngenta AG MIR162 Corn Litig.*, No. 18-cv-2408-JWL, MDL No. 2591, pending in the United States District Court for the District of Kansas.

“[A] writ of mandamus is a drastic remedy, and is to be invoked only in extraordinary circumstances.” *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1186 (10th Cir. 2009) (internal quotation marks omitted). “Although writs of mandamus may be best known for their traditional application—compelling a government official to perform a nondiscretionary duty owed to a plaintiff—. . . writs of mandamus have been invoked when a district court displayed a disregard of the Federal Rules of Civil

Procedure.” *Id.* at 1187 (citation omitted). Here, petitioners claim the JPML abused its discretion in transferring the Minnesota suit to the multidistrict litigation pending in Kansas.

To be entitled to a writ of mandamus, three conditions must be met:

First, because a writ is not a substitute for an appeal, the party seeking issuance of the writ must have no other adequate means to attain the relief he desires. Second, the petitioner must demonstrate that his right to the writ is clear and indisputable. Finally, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.

Id. (citations and internal quotation marks omitted).

Petitioners have failed to establish one or more of these conditions and we therefore deny the petition for a writ of mandamus. We grant petitioners’ motion to file a reply brief.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal line.

ELISABETH A. SHUMAKER, Clerk