

DENIED and Opinion Filed November 10, 2015.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-15-01354-CV

IN RE DARSHANA RATHOD, Relator

**Original Proceeding from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-15-00643**

MEMORANDUM OPINION

Before Justices Francis, Myers, and Schenck
Opinion by Justice Myers

Relator filed this petition for writ of mandamus requesting that the Court order the trial court to vacate its order granting the motion for new trial filed by real party in interest Walnut Hill Physicians' Hospital, LLC, dba Walnut Hill Medical Center and setting aside the default judgment previously rendered against Walnut Hill in this case. Relator further requests that we order the trial court to allow relator to conduct discovery related to the motion for new trial and require the trial court to conduct an evidentiary hearing on the motion for new trial following the completion of discovery.

We have declined to extend merits-based mandamus review to trial court orders granting new trial following bench trials. *See In re Abrokwa*, No. 05-15-01239-CV, 2015 WL 6520083, at *1 (Tex. App.—Dallas Oct. 28, 2015, orig. proceeding) (mem. op.) (declining to extend mandamus review to order granting new trial following default judgment); *In re Klair*, No. 05–15–00462–CV, 2015 WL 1850907, at *1 (Tex. App.—Dallas Apr. 23, 2015, orig. proceeding)

(mem. op.) (same); *In re Dixon*, No. 05–15–00242–CV, 2015 WL 1183596, at *1 (Tex. App.—Dallas Mar. 16, 2015, orig. proceeding) (mem. op.) (declining to extend merits based mandamus review to case in which elected judge of the trial court granted new trial following a bench trial to an assigned judge); *In re Foster*, No. 05–15–00179–CV, 2015 WL 682335, at *1 (Tex. App.—Dallas Feb. 18, 2015, orig. proceeding) (mem. op.) (declining to extend mandamus review to order granting new trial following bench trial). This case does not provide a basis for revisiting those decisions.

We also cannot conclude that the trial court has abused its discretion in denying relator’s request for discovery on the motion for new trial. Based on our review of the mandamus record, we have determined the trial court exercised “informed discretion” in concluding the discovery relator sought was not warranted. *See Estate of Pollack v. McMurrey*, 858 S.W.2d 388, 392 (Tex. 1993) (“Denial of discovery without an exercise of informed discretion constitutes a clear abuse of discretion.”)

We deny the petition.

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/Lana Myers/
LANA MYERS
JUSTICE