

Denied and Opinion Filed April 24, 2024



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

No. 05-23-01196-CV

IN RE CYNTHIA BANIGAN, Relator

**Original Proceeding from the 468th Judicial District Court
Collin County, Texas
Trial Court Cause No. 468-50281-2021**

MEMORANDUM OPINION

Before Justices Partida-Kipness, Carlyle, and Garcia
Opinion by Justice Partida-Kipness

This mandamus proceeding arises out of a contested divorce action in which Husband (real party in interest) moved to compel arbitration pursuant to an arbitration provision within the parties' post-marital partition and exchange agreement. Wife (relator) opposed arbitration, contending she did not sign the partition agreement voluntarily and it is also unconscionable. In this mandamus proceeding, Wife argues the trial court abused its discretion by denying her (1) a reasonable opportunity to conduct pre-arbitration discovery on these defenses and (2) a jury trial to resolve contested fact issues regarding the same.

Entitlement to mandamus relief requires a relator to show the trial court clearly abused its discretion and the relator lacks an adequate appellate remedy. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). Having considered the petition, response, reply, sur-reply,¹ and record before us, we conclude Wife has failed to demonstrate entitlement to mandamus relief.

Accordingly, we deny the petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a). We also lift the stay issued by this Court’s December 1, 2023 Order.

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/Robbie Partida-Kipness//

ROBBIE PARTIDA-KIPNESS
JUSTICE

¹ Husband filed an unopposed motion to file the sur-reply. We grant the motion.