

Opinion issued November 9, 2012



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-12-00941-CV

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**IN RE MELISSA GIESEN, Relator**

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**Original Proceeding on Petition for Writ of Mandamus**

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**MEMORANDUM OPINION**

Relator, Melissa Giesen, has filed a petition for writ of mandamus in this Court. *See* TEX. GOV'T CODE § 22.221 (Vernon 2004); *see also* TEX. R. APP. P. 52.1. The related action pending in the trial is a suit to modify the parent-child

relationship.<sup>1</sup> In her mandamus petition, Giesen challenges the July 20, 2012 “Temporary Orders in Suit to Modify Parent-Child Relationship,” signed by Associate Judge Diane M. Guariglia. Giesen requests this Court to “grant this writ of mandamus directing Associate Judge Diane M. Guariglia to vacate the court’s temporary order dated July 20, 2012.”

We do not have mandamus jurisdiction over an associate judge.<sup>2</sup> See TEX. GOV’T CODE ANN. § 22.221(b) (providing for mandamus jurisdiction over a judge of a district court or a county court); see also *In re J.W.B.*, No. 14–12–00410–CV, 2012 WL 1695208, at \*1 (Tex. App.—Houston [14th Dist.] May 15, 2012, orig. proceeding) (mem. op.); *In re Vats*, No. 01–11–00329–CV, 2011 WL 2112789, at \*1 (Tex. App.—Houston [1st Dist.] May 23, 2011, orig. proceeding) (mem. op.). Accordingly, we dismiss Giesen’s petition for writ of mandamus for lack of

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<sup>1</sup> The underlying case is *In the Interest of [N.T.S., T.L.S. and W.W.S.], Children*, cause number 2010–78935, pending in the 245th District Court of Harris County, Texas.

<sup>2</sup> Giesen also identified the Honorable Roy Moore, presiding judge of the 245th District Court, as a respondent. On August 31, 2012, Giesen filed a motion for reconsideration of the July 20, 2012 temporary orders signed by the associate judge. On September 25, 2012, Judge Moore signed an order denying Giesen’s motion for reconsideration. Although she identifies Judge Moore as a respondent, Giesen limits her prayer for relief specifically to requesting this Court to order the associate judge to vacate the July 20, 2012 order. Giesen also offers no substantive argument in her mandamus petition regarding how Judge Moore abused his discretion in denying the motion for reconsideration.

jurisdiction.<sup>3</sup>

**PER CURIAM**

Panel consists of Justices Jennings, Higley, and Sharp.

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<sup>3</sup> We further note that the mandamus record does not show that the referring court, that is, the presiding judge of the 245th District Court, adopted the associate judge's July 20, 2012 order. *See In re J.W.B.*, No. 14-12-00410-CV, 2012 WL 1695208, at \*1 (Tex. App.—Houston [14th Dist.] May 15, 2012, orig. proceeding) (mem. op.) (dismissing mandamus proceeding challenging temporary order signed by associate judge when order had not been adopted by referring court); *see also* TEX. FAM. CODE ANN. § 201.013(b) (Vernon 2009) (providing that “if a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the proposed order or judgment of the associate judge becomes the order or judgment of the referring court only on the referring court’s signing the proposed order or judgment”).