

Petition for Writ of Mandamus Denied and Memorandum Opinion filed October 28, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-01012-CV

VALERIE U. OJI, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS**

MEMORANDUM OPINION

On October 18, 2010, relator Valerie U. Oji filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code § 22.221; *see also* Tex. R. App. P. 52. Relator complains that respondent, the Honorable Doug Warne, presiding judge of the 311th District Court of Harris County, abused his discretion in entering temporary orders in a child custody modification proceeding pending in cause number 2001-46524.

Relator complains that the trial court did not consider her objection to its jurisdiction over her ex-husband's motion to modify child custody, which she raised under the Texas Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). *See* Tex. Fam. Code § 152.202. Under the provisions of the UCCJEA, a Texas court has continuing, exclusive jurisdiction until the decree-granting state determines that either the child no longer has a significant connection with Texas or substantial information about the

child is not available in Texas. *See In re Forlenza*, 140 S.W.3d 373, 379 (Tex. 2004). Relator has brought a custody action in Maryland, where she now resides, and she contends that the Maryland court properly has jurisdiction. She asks that we vacate the trial court's August 6, 2010 order, direct the court to confer with the Maryland court or conduct a hearing to determine jurisdiction, and direct the court to grant her petition for writ of habeas corpus.

Mandamus relief is available only to correct a clear abuse of discretion for which the relator has no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004). We determine the adequacy of an appellate remedy by balancing the benefits of mandamus review against its detriments. *Id.* at 136. Because temporary orders are not appealable, mandamus is an appropriate remedy when a trial court abuses its discretion in issuing temporary orders in a suit affecting the parent-child relationship. *See In re Derzapf*, 219 S.W.3d 327, 335 (Tex. 2007).

Our mandamus record is insufficient to determine whether the trial court has abused its discretion. The August 6, 2010 order recites that a hearing was conducted and evidence was taken. Relator has not furnished this court with a record from the hearing. The relator must file a properly authenticated transcript of any relevant testimony from any underlying proceeding, or file a statement that no testimony was adduced in connection with the ruling about which she complains. *See Tex. R. App. P. 52.7(a)(2)*.

Our mandamus record also fails to include copies of many documents relevant to relator's claim for relief, including the motion on which the August 6, 2010 order was granted. The record also does not include copies of the 2008 motion and default order rendered by the Texas court. In addition, the copies of relator's pleadings, purportedly filed in June of 2010, are not file-stamped and bear no indication that a hearing was requested or set. In an original mandamus proceeding, the petition must be accompanied by a certified or sworn copy of every document that is material to the relator's claim for

relief and that was filed in any underlying proceeding. *See* Tex. R. App. P. 52.7(a)(1). It is relator's burden to provide a record sufficient to establish her right to mandamus relief. *See Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992).

A mandamus action requires certainty as to both pleadings and facts. *Johnson v. Hughes*, 663 S.W.2d 11, 12 (Tex. App.—Houston [1st Dist.] 1983, orig. proceeding). We may not resolve disputed fact issues in an original proceeding. *See Brady v. Fourteenth Court of Appeals*, 795 S.W.2d 712, 714 (Tex. 1990). Here, the incomplete record precludes our determination whether the trial court clearly abused its discretion.

Accordingly, we deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Yates and Boyce.