

Petition for Writ of Mandamus Denied and Memorandum Opinion filed November 23, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-01107-CV

VALERIE U. OJI, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS

MEMORANDUM OPINION

On November 10, 2010, relator Valerie U. Oji filed a second 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. On October 28, 2010, this court denied relator's first petition seeking the same relief because the mandamus record was insufficient to determine whether the trial court had abused its discretion. *See In re Oji*, No. 14-10-01012-CV, 2010 WL 4293162 (Tex. App.—Houston [14th Dist.] Oct. 28, 2010, orig. proceeding) (mem. op.).

The deficiencies cited in our first opinion have not been corrected, and the record before this court incomplete. 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). 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). 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); *see also* Tex. R. App. P. 52.3(g) ("Every statement of fact in the petition must be supported by citation to competent evidence included in the appendix or record."). 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).

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

PER CURIAM

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