



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-17-00060-CV

**IN RE** Christina **RANGEL**

Original Mandamus Proceeding<sup>1</sup>

PER CURIAM

Sitting: Marialyn Barnard, Justice  
Rebeca C. Martinez, Justice  
Luz Elena D. Chapa, Justice

Delivered and Filed: March 29, 2017

PETITION FOR WRIT OF MANDAMUS CONDITIONALLY GRANTED IN PART,  
DENIED IN PART

On February 4, 2017, Relator filed a petition for writ of mandamus and motion for emergency stay. The court ordered Relator's petition stricken for failing to redact the name of the minor involved in this matter. *See* TEX. R. APP. P. 9.9. Relator filed a corrected petition and this court requested a response. Real Party in Interest filed a response on March 1, 2017. The court conditionally grants the petition for writ of mandamus in part, and denies in part.

**BACKGROUND**

Relator is the mother of C.A.R., the subject of the underlying Suit Affecting the Parent Child Relationship. The real party in interest is C.A.R.'s father. On May 24, 2016, the trial court

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<sup>1</sup> This proceeding arises out of Cause No. 2008-CI-17955, styled *In the Interest of C.A.R., a Child*, pending in the 407th Judicial District Court, Bexar County, Texas, the Honorable Laura Salinas presiding.

issued temporary orders that restricted Relator's access to C.A.R., and that did not allow Relator possession of C.A.R. as required by the standard possession order described in the Texas Family Code. *See* TEX. FAM. CODE ANN. § 153.101(a) (West 2014). Relator does not challenge the May 24 temporary orders. After a five day hearing in October and November, 2016, the trial court issued Additional Temporary Orders, which were signed on December 14, 2016. The additional orders further restricted Relator's access, allowing Relator to visit C.A.R. only at KidShare, a program allowing parents to visit children in a supervised setting. The additional orders removed Relator's right to have telephonic and electronic access to C.A.R. The additional orders also deprived Relator of the right to receive information concerning C.A.R.'s health, education and welfare; have access to C.A.R.'s educational records; consult with school officials concerning C.A.R.'s welfare and educational status; attend school assemblies; be designated as a person to be notified in an emergency; and consent to medical, dental, and surgical treatment during an emergency. Relator was also ordered not to go to C.A.R.'s school for any purpose, nor contact the school for any reason. Both the May 24 temporary orders and the additional orders designate Relator as a parent possessory conservator.

In her petition for writ of mandamus, Relator argues the trial court abused its discretion by "imposing extreme restrictions" on Relator's access to C.A.R. without providing a means for Relator to remove those restrictions; depriving Relator of fundamental parental and constitutional rights; awarding relief beyond that justified by the real party in interest's pleadings; and failing to include findings of fact pursuant to sections 153.072 and 153.258 of the Texas Family Code.

Relator filed very few documents with her mandamus as a record or appendix. She did not attach any of the real party in interest's pleadings and did not file a reporter's record. Although Relator states in her petition that she does not have the money to pay for the reporter's record, she did not file an affidavit of indigence.

### ANALYSIS

With the minimal record provided by Relator, this court lacks the information necessary to evaluate the trial court's decision as challenged by Relator in her first three issues. However, the record before us is sufficient to establish Relator's right to relief as to her fourth issue, the lack of specific fact findings in the additional orders.

Section 153.072 of the Texas Family Code allows a court to "limit the rights and duties of a parent appointed as a conservator if the court makes a written finding that the limitation is in the best interest of the child." TEX. FAM. CODE ANN. § 153.072 (West 2014). Section 153.258 provides:

[w]ithout regard to Rules 296 through 299, Texas Rules of Civil Procedure, in all cases in which possession of a child by a parent is contested and the possession of the child varies from the standard possession order, on written request made or filed with the court not later than 10 days after the date of the hearing or on oral request made in open court during the hearing, the court shall state in the order the specific reasons for the variance from the standard order.

TEX. FAM. CODE ANN. § 153.258 (West 2014).

The additional orders in this case are more restrictive than the standard order: Relator, a parent possessory conservator, has no right to possession of C.A.R. and has access to C.A.R. only under direct supervision of a third party. The standard possession order allows periods of unsupervised possession of a child by a parent appointed possessory conservator. *See* TEX. FAM. CODE ANN. § 153.312 (West 2014) (setting out rights of possessory conservator residing within 100 miles of child's primary residence, including visitation and unsupervised possession). The additional orders comply with section 153.072 of the Texas Family Code, stating the orders "are for the safety and welfare and in the best interest of [C.A.R.]." However, the additional orders do not include additional findings required by section 153.258. Relator filed a written request for findings on November 22, 2016. The hearing that produced the additional temporary orders took

place on October 20, 21, 24, 25, and November 14, 2016. Relator complied with section 153.258 by requesting findings within ten days of the hearing, thus triggering the trial court's duty to state specific reasons the additional orders varied from the standard order.

The wording of section 153.258 is mandatory: once a timely request is made, "the court shall state in the order the specific reasons for the variance from the standard order." *Id.* "The use of the word 'shall' in a statute 'imposes a duty.'" *In re Bustamante*, No. 04-16-00333-CV, 2016 WL 6885836 at \*4 (Tex. App.—San Antonio Nov. 23, 2016, orig. proceeding) (citing TEX. GOV'T CODE ANN. § 311.016(3) (West 2013) and *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001)). The failure of the trial court to comply with the duty created by the statute was an abuse of discretion. *See id.* Further, Relator has no remedy by appeal because temporary orders in a suit affecting the parent-child relationship are not subject to appeal. *See In re Herring*, 221 S.W.3d 729, 730 (Tex. App.—San Antonio 2007, orig. proceeding). Thus, because the trial court in this case abused its discretion and Relator has no appellate remedy, mandamus is the appropriate remedy. *See Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding) (mandamus may issue to correct a clear abuse of discretion or a violation of a duty imposed by law when there is no other adequate remedy by appeal.)

#### CONCLUSION

Because of the reasons stated above, we conditionally grant the petition for writ of mandamus in part regarding the lack of findings in the Additional Temporary Orders. The trial court shall issue Additional Temporary Orders that shall state the specific reason for the variance from the standard possession order. We deny all other relief, including Relator's prayer that we order the trial court to vacate the December 14, 2016 Additional Temporary Orders. We further deny Relator's motion for emergency stay.

PER CURIAM