



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-17-00036-CV

IN RE: SHANE PERRY

Original Mandamus Proceeding

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Justice Moseley

MEMORANDUM OPINION

On December 20, 2016, the trial court issued temporary orders (further temporary orders) in cause number CV36802, styled *In the Interest of N.L.P., a Child*, ordering Shane Perry, N.L.P.'s father and temporary joint managing conservator, to have no contact with N.L.P. "until further ordered by the Court." On Perry's motion, the trial court recused itself from the matter on January 25, 2017. After Judge Andrew Kupper was assigned to the case, Perry filed an emergency motion to vacate and/or reconsider further temporary orders on January 31. On February 21, the trial court held a hearing on the motion and took the matter under advisement. On February 28, Perry filed an emergency motion in the trial court to enter an order on his motion to vacate and/or reconsider further temporary orders.

On March 6, Perry filed a petition for writ of mandamus in this Court, asking that we order the trial court to vacate its further temporary orders. Perry complains that the trial court (1) erred in varying from the standard possession order, (2) erred in admitting the opinions and recommendations of two expert witnesses, (3) erred in refusing to permit cross-examination of those expert witnesses, and (4) entered an order contrary to the child's best interest. For the reasons stated herein, we deny the requested relief.

To be entitled to mandamus relief, the relator must show that the trial court clearly abused its discretion and that the relator has no adequate remedy at law. *In re Sw. Bell Tel. Co.*, 35 S.W.3d 602, 605 (Tex. 2000) (orig. proceeding) (mem. op.). Mandamus is an appropriate means to challenge temporary orders because such orders are interlocutory and not appealable. *In re Mays-Hooper*, 189 S.W.3d 777, 778 (Tex. 2006) (orig. proceeding) (per curiam); *In re Slanker*, 365

S.W.3d 718, 721 (Tex. App.—Texarkana 2012, orig. proceeding); *see* TEX. FAM. CODE ANN. § 105.001(e) (West 2014).

Perry asks this Court to issue a writ of mandamus directing the respondent trial judge to vacate or modify the further temporary orders. However, the respondent trial judge is not the judge that issued the further temporary orders. “[G]enerally a writ will not issue against one judge for what another did.” *In re Blevins*, 480 S.W.3d 542, 543 (Tex. 2013) (orig. proceeding) (per curiam); *see In re Baylor Med. Ctr. at Garland*, 280 S.W.3d 227, 228 (Tex. 2008) (orig. proceeding). Recognizing this general rule, Perry filed his emergency motion to vacate and/or reconsider further temporary orders with the current trial court to provide the successor judge with the opportunity to rule on the challenged matter. *See In re Gonzales*, 391 S.W.3d 251, 252 (Tex. App.—Austin 2012, orig. proceeding) (successor judge should be provided opportunity to rule on challenged matter before mandamus petition will be entertained). Perry has thus provided the successor trial judge with the opportunity to rule on the challenged matter. The successor judge has not, however, issued a ruling on the challenged matter.

Because the trial court is the proper tribunal to determine whether vacation or modification of the further temporary orders is appropriate, we decline to grant mandamus relief. *See id.* While

Perry does not request that we order the trial court to rule on the emergency motion to vacate and/or reconsider the further temporary orders, we trust the trial court will do so in a timely fashion.

Bailey C. Moseley
Justice

Date Submitted: March 23, 2017
Date Decided: March 24, 2017