



NUMBER 13-20-00443-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN RE MARK A. CANTU

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Justices Benavides, Hinojosa, and Tijerina
Memorandum Opinion by Justice Hinojosa¹**

Relator Mark A. Cantu, proceeding pro se, filed a petition for writ of mandamus seeking to compel the trial court to hold a hearing and rule on “Plaintiff’s Second Amended Motion to Dismiss a/k/a Plea to the Jurisdiction.” Relator has also filed an emergency motion seeking to stay depositions which are scheduled for November 2, 3, and 4. We deny both the petition for writ of mandamus and motion for emergency relief without prejudice.

¹ See TEX. R. APP. P. 52.8(d) (“When granting relief, the court must hand down an opinion as in any other case,” but when “denying relief, the court may hand down an opinion but is not required to do so.”); *id.* R. 47.4 (distinguishing opinions and memorandum opinions).

To obtain relief by writ of mandamus, a relator must establish that the trial court committed a clear abuse of discretion and that there is no adequate remedy by appeal. *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding); *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding). The relator bears the burden to properly request and show entitlement to mandamus relief. See *Walker*, 827 S.W.2d at 837; see *In re Carrington*, 438 S.W.3d 867, 868 (Tex. App.—Amarillo 2014, orig. proceeding); *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding). This burden requires that relator provide the reviewing court with a sufficient record to establish the right to mandamus relief. See TEX. R. APP. P. 52.7; *Walker*, 827 S.W.2d at 837; *In re Carrington*, 438 S.W.3d at 869; *In re Davidson*, 153 S.W.3d 490, 491 (Tex. App.—Amarillo 2004, orig. proceeding).

Because relator failed to provide us with a record to support his petition for writ of mandamus and motion for emergency relief, this Court concludes that he has not met his burden to obtain relief. Accordingly, we deny the petition for writ of mandamus and motion for emergency relief without prejudice. See TEX. R. APP. P. 52.8(a), 52.10(b).

LETICIA HINOJOSA
Justice

Delivered and filed the
30th day of October, 2020.