



NUMBER 13-21-00092-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE C.N.E.

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Longoria and Tijerina
Memorandum Opinion by Chief Justice Contreras¹**

By petition for writ of mandamus, relator C.N.E. seeks to compel the trial court to:
(1) dismiss the suit for modification filed by the real party in interest, A.J.S., to the extent that A.J.S. requests the right to establish the primary residence of the parties' minor child, S.O.S., and (2) vacate a temporary order which, inter alia, changed a primary residence

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."); TEX. R. APP. P. 47.4 (distinguishing opinions and memorandum opinions).

restriction for the minor child.² See TEX. FAM. CODE ANN. § 156.102 (providing the requirements for modifying the exclusive right to determine the primary residence of a minor child under certain circumstances); *id.* § 156.006(b) (limiting the trial court's ability to issue temporary orders in a suit for modification unless the statutory requirements are met).

Mandamus is both an extraordinary remedy and a discretionary one. *In re Garza*, 544 S.W.3d 836, 840 (Tex. 2018) (orig. proceeding) (per curiam). To obtain relief by writ of mandamus, a relator must establish that an underlying order is void or a clear abuse of discretion and that no adequate appellate remedy exists. *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). Because a temporary order in a suit affecting the parent-child relationship is not subject to appeal, mandamus may be an appropriate remedy when a trial court abuses its discretion in issuing a temporary order. See, e.g., *In re Mays-Hooper*, 189 S.W.3d 777, 778 (Tex. 2006) (orig. proceeding) (per curiam); *In re H.R.L.*, 458 S.W.3d 23, 32 (Tex. App.—El Paso 2014, orig. proceeding); *In re Herring*, 221 S.W.3d 729, 730 (Tex. App.—San Antonio 2007, orig. proceeding); *In re Lewin*, 149 S.W.3d 727, 734 (Tex. App.—Austin 2004, orig. proceeding).

The Court, having examined and fully considered the petition for writ of mandamus, the response filed by A.J.S., relator's reply, and the applicable law, is of the opinion that relator has not shown herself entitled to the relief sought. Accordingly, we deny the

² See TEX. FAM. CODE ANN. § 109.002(d) (“On the motion of the parties or on the court’s own motion, the appellate court in its opinion may identify the parties [in a suit affecting the parent-child relationship] by fictitious names or by their initials only.”).

petition for writ of mandamus. See TEX. R. APP. P. 52.8(a).

DORI CONTRERAS
Chief Justice

Delivered and filed on the
18th day of May, 2021.