



NUMBER 13-21-00427-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN RE DANIEL AIELLO

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

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

On December 3, 2021, relator Daniel Aiello filed a pro se petition for writ of mandamus through which he seeks to compel the trial court to issue findings of fact and

¹ See TEX. R. APP. P. 52.8(d) (“When denying relief, the court may hand down an opinion but is not required to do so. When granting relief, the court must hand down an opinion as in any other case.”); *id.* R. 47.1 (“The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal.”); *id.* R. 47.4 (explaining the differences between opinions and memorandum opinions).

conclusions of law pertaining to an appeal filed by relator that is currently pending in our appellate cause number 13-21-00385-CV.

“Mandamus relief is an extraordinary remedy requiring the relator to show that (1) the trial court clearly abused its discretion and (2) the relator lacks an adequate remedy on appeal.” *In re Acad., Ltd.*, 625 S.W.3d 19, 25 (Tex. 2021) (orig. proceeding); see *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36, 138 (Tex. 2004) (orig. proceeding); *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding). “The relator bears the burden of proving these two requirements.” *In re H.E.B. Grocery Co.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam); *Walker*, 827 S.W.2d at 840. The relator must include a statement of facts supported by citations to competent evidence included in the appendix or record and must also provide a clear and concise argument for the contentions made with appropriate citations to authorities and to the appendix or record. See *generally* TEX. R. APP. P. 52.3 (governing the form and contents of a petition for writ of mandamus). The relator must also file an appendix and record sufficient to support the claim for mandamus relief. See *id.* R. 52.3(k)(1) (specifying the required contents for the appendix); *id.* R. 52.7(a) (specifying the required contents for the record).

The Court, having examined and fully considered relator’s petition for writ of mandamus and the applicable law, is of the opinion that relator has not met his burden to obtain relief. Relator’s petition for writ of mandamus fails to comply with the foregoing requirements, and, fundamentally, relator has an adequate remedy by appeal because matters pertaining to his request for findings of fact and conclusions of law may be raised

in the direct appeal pending before this Court in cause number 13-21-00385-CV. See *In re Sheshtawy*, 161 S.W.3d 1, 2 (Tex. App.—Houston [14th Dist.] 2003, orig. proceeding) (per curiam) (discussing the procedure for obtaining findings of fact and conclusions of law); see also *In re Mikulin*, No. 01-19-00010-CV, 2019 WL 237918, at *1 (Tex. App.—Houston [1st Dist.] Jan. 17, 2019, orig. proceeding) (mem. op.) (per curiam) (denying a petition for writ of mandamus seeking to compel findings of fact and conclusions of law because the relator could raise the issue in the pending appeal and thus possessed an adequate remedy by appeal); *In re Rhodes*, No. 05-18-00818-CV, 2018 WL 4858732, at *1 (Tex. App.—Dallas Oct. 8, 2018, orig. proceeding) (mem. op.) (same). Accordingly, we deny the petition for writ of mandamus. We express no opinion in this original proceeding regarding whether findings of fact and conclusions of law were properly requested in the appeal, or whether they were required or appropriate, and instead reserve those issues for consideration in cause number 13-21-00385-CV.

DORI CONTRERAS
Chief Justice

Delivered and filed on the
8th day of December, 2021.