



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

IN RE:	§	No. 08-17-00246-CV
MARK KRIEGER,	§	AN ORIGINAL PROCEEDING
Relator.	§	IN MANDAMUS AND
	§	PROHIBITION
	§	

MEMORANDUM OPINION

Mark Krieger has filed a petition seeking the writs of mandamus and prohibition against the Honorable Yahara Gutierrez, Judge of the 65th District Court of El Paso County, Texas. The requested relief is denied.

To be entitled to mandamus relief, a relator generally must meet two requirements. First, the relator must show that the trial court clearly abused its discretion. *In re Prudential Insurance Company of America*, 148 S.W.3d 124, 135 (Tex. 2004). Second, the relator must demonstrate that there is no adequate remedy by appeal. *Id.* at 135-36. Based on the record before us, we conclude that Relator has failed to establish he is entitled to mandamus relief.

Relator additionally requests that the Court issue the writ of prohibition to prevent the trial court from exercising jurisdiction over a divorce action pending in the 65th District Court (cause number 2011CM4314). A writ of prohibition operates like an injunction issued by a superior court to control, limit, or prevent action in a court of inferior jurisdiction. *Holloway v. Fifth Court of*

Appeals, 767 S.W.2d 680, 682 (Tex.1989); *In re Cap Rock Energy Corporation*, 225 S.W.3d 160 (Tex.App.--El Paso 2005, orig. proceeding). The purpose of the writ is to enable a superior court to protect and enforce its jurisdiction and judgments. *Holloway*, 767 S.W.2d at 683; *Cap Rock*, 225 S.W.3d at 160. The writ is typically used to protect the subject matter of an appeal or to prohibit an unlawful interference with the enforcement of a superior court's orders and judgments. *Holloway*, 767 S.W.2d at 683. An appellate court does not have jurisdiction, absent actual jurisdiction of a pending proceeding, to issue a writ of prohibition requiring that a trial court refrain from performing a future act. *See In re Nguyen*, 155 S.W.3d 191, 194 (Tex.App--Tyler 2003, orig. proceeding); *Lesikar v. Anthony*, 750 S.W.2d 338, 339 (Tex.App.--Houston [1st Dist.] 1988, orig. proceeding). Relator has failed to establish that issuance of the writ of prohibition is necessary to protect the subject matter of a pending appeal or to prohibit interference with enforcement of an order or judgment of this Court. Accordingly, we deny the petition seeking issuance of the writs of mandamus and prohibition.

GINA M. PALAFOX, Justice

December 6, 2017

Before McClure, C.J., Rodriguez, and Palafox, JJ.