

Denied and Opinion Filed May 3, 2016.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-00491-CV

IN RE LESLIE KATHRYN FLOYD, Relator

**Original Proceeding from the 219th Judicial District Court
Collin County, Texas
Trial Court Cause No. 219-50699-2013**

MEMORANDUM OPINION

Before Chief Justice Wright, Justice Lang, and Justice Brown
Opinion by Justice Lang

In this petition for writ of mandamus, relator requests that the Court order the trial court to vacate its April 15, 2016 Order Denying Realtor's Petition for Writ of Habeas Corpus and its February 19, 2016 Temporary Orders and order the trial court to grant a writ of habeas corpus for the possession of the child who is the subject of this suit affecting the parent-child relationship. Relator contends that the trial court's temporary orders improperly had the effect of changing the designation of the person with the exclusive right to designate the primary residence of the child in violation of section 156.006 of the Texas Family Code. She argues that she is entitled to possession of the child under the prior final order. She also argues that the current temporary orders deprive her of all possession of the child because they provide only for possession for parents living more than 100 miles apart and she contends she lives fewer than 100 miles from the father of the child.

The mandamus record does not reflect that relator has argued to the trial court that the temporary orders are improper under section 156.006 of the Texas Family Code and therefore unenforceable. The mandamus record also does not reflect that the relator has argued in the trial court that the temporary orders do not provide for periods of possession by her. The extraordinary nature of the mandamus remedy and the requirement that a party seeking mandamus relief exercise diligence both mandate that arguments not presented to the trial court cannot first be considered in an original proceeding seeking mandamus. *See In re Am. Optical Corp.*, 988 S.W.2d 711, 714 (Tex. 1991) (orig. proceeding) (refusing to consider objection that discovery sought was not relevant because argument was not presented to the trial court); *In re Abney*, No. 07-15-00456-CV, 2016 WL 642129, at *2 (Tex. App.—Amarillo Feb. 17, 2016, no. pet. h.) (refusing to consider argument that trial court’s temporary orders interfered with mother’s right to designate child’s primary residence because argument had not been presented to trial court).

We deny the petition for writ of mandamus.

/Douglas S. Lang/
DOUGLAS S. LANG
JUSTICE

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