

DENY; and Opinion Filed February 27, 2017.



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

No. 05-16-01377-CV

IN RE CITY OF DALLAS, Relator

**Original Proceeding from the 199th Judicial District Court
Collin County, Texas
Trial Court Cause No. 199-01743-99**

MEMORANDUM OPINION

Before Justices Lang, Lang-Miers, and Brown
Opinion by Justice Brown

This original proceeding is the second arising from lawsuits filed against the City of Dallas by current and former firefighters alleging that the City breached its contract with them regarding their pay. The underlying litigation has also resulted in three interlocutory appeals. The core issue is whether an ordinance passed in 1979 was intended to provide a one-time salary adjustment or apply to all future salary adjustments. In the current proceeding, the City complains of the trial court's refusal to rule on the City's motion for summary judgment and second plea to the jurisdiction.

To be entitled to mandamus relief, a relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). Based on the record before us, we conclude the City has not shown it is entitled to the relief requested. *See* TEX. R. APP. P. 52.8(a); *Walker v. Packer*, 827 S.W.2d 833, 839-40 (Tex. 1992) (orig. proceeding).

The trial court was within its discretion to defer ruling until trial where fact issues on the merits are intertwined with the fact issues on which the plea to the jurisdiction is based. Under such circumstances, a trial court may properly reserve ruling until trial. *See Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227–28 (Tex. 2004) (holding that when disputed evidence of jurisdictional facts implicate the merits of the case, then the finder of fact must resolve the fact issues).

Accordingly, we deny relator's petition for writ of mandamus.

/Ada Brown/

ADA BROWN
JUSTICE

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