

Deny and Opinion Filed December 1, 2020



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

No. 05-20-00844-CV

IN RE J.H., Relator

**Original Proceeding from the 422nd Judicial District Court
Kaufman County, Texas
Trial Court Cause No. 95585-422**

MEMORANDUM OPINION

Before Justices Osborne, Reichek, and Browning
Opinion by Justice Browning

Relator's September 23, 2020 petition for writ of mandamus asks us to compel the trial court to vacate its order denying his request for a jury trial. Entitlement to mandamus relief requires relator to show both that the trial court has clearly abused its discretion and that he has no adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding).

Based on our review of the petition, real party in interest's response, relator's reply, and the mandamus record, we conclude that relator has failed to demonstrate an abuse of discretion. *See Girdner v. Rose*, 213 S.W.3d 438, 443 (Tex. App.—Eastland 2006, no pet.) (jury request untimely where it was made more than two

years after suit was filed and less than forty-five days before fifth setting); *Crittenden v. Crittenden*, 52 S.W.3d 768, 769 (Tex. App.—San Antonio 2001, pet. denied) (jury request untimely where the trial was continued numerous times, parties previously agreed to settlement, and next available jury trial setting was six months away). Accordingly, we deny the petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a).

/John G. Browning/
JOHN G. BROWNING
JUSTICE

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