

CONDITIONALLY GRANT and Opinion Filed November 19, 2021



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

No. 05-21-00465-CV

IN RE DEVIN MANESS, Relator

**Original Proceeding from the 330th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-19-09378**

MEMORANDUM OPINION

Before Justices Schenck, Nowell, and Garcia
Opinion by Justice Schenck

This original proceeding arises from a suit affecting the parent–child relationship. After a scheduled bench trial was reset, relator Devin Maness demanded a jury trial and paid the jury fee. At the pretrial conference, real party in interest, Sheila Maness, objected to the jury trial demand. The following day, the trial court entered an order denying relator’s jury trial demand. Relator now challenges that order.

MANDAMUS STANDARD

Mandamus is an extraordinary remedy that is available only when a trial court clearly abuses its discretion and there is no adequate remedy by appeal. *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 462 (Tex. 2008) (orig. proceeding). A

trial court has no discretion in determining what the law is or in applying the law to the facts. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135 (Tex. 2004) (orig. proceeding). Denial of a jury trial, when a right to one is clearly shown, can be addressed both by appeal and mandamus. *Id.* at 139. But, in the sensitive context of child–custody or possession proceedings, courts have regularly granted mandamus relief. *See, e.g., Powell v. Stover*, 165 S.W.3d 322, 323 (Tex. 2005) (orig. proceeding); *In re Forlenza*, 140 S.W.3d 373, 379 (Tex. 2004) (orig. proceeding).

RIGHT TO A JURY TRIAL

The Texas Constitution guarantees the right to a trial by jury. TEX. CONST. art. I, § 15 (“The right of trial by jury shall remain inviolate.”); *id.*, art. V, § 10 (stating that “no jury shall be empaneled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury, for such sum, and with such exceptions as may be prescribed by the Legislature”). “The right to jury trial is one of our most precious rights, holding ‘a sacred place in English and American history.’” *Gen. Motors Corp. v. Gayle*, 951 S.W.2d 469, 476 (Tex. 1997) (orig. proceeding) (quoting *White v. White*, 196 S.W. 508, 512 (Tex. 1917)). However, a party’s right to a jury trial is not absolute, as it is subject to several procedural requirements. *See Willms v. Ams. Tire Co., Inc.*, 190 S.W.3d 796, 810 (Tex. App.—Dallas 2006, pet. denied). The constitution provides that in cases tried in the district courts, either party has the right to a jury on application made in open court, “but no jury shall be empaneled in any civil case unless demanded by a party

to the case, and a jury fee be paid by the party demanding a jury, for such sum, and with such exceptions as may be prescribed by the Legislature.” TEX. CONST. art. V, § 10.

Under the rules of civil procedure, “[n]o jury trial shall be had in any civil suit, unless a written request for a jury trial is filed with the clerk of the court a reasonable time before the date set for trial of the cause on the non-jury docket, but not less than thirty days in advance.” TEX. R. CIV. P. 216.

A request for a jury trial made in advance of the thirty-day deadline is presumed to have been made a reasonable time before trial. *Halsell v. Dehoyos*, 810 S.W.2d 371, 371 (Tex. 1991) (per curiam); *In re K.A.H.*, No. 05-16-01067-CV, 2017 WL 1536505, at *3 (Tex. App.—Dallas Apr. 27, 2017, no pet.) (mem. op.). However, the presumption may be rebutted by a showing that granting a jury trial would operate to injure the adverse party, disrupt the court’s docket, or impede the ordinary handling of the court’s business. *Halsell*, 810 S.W.2d at 371. A refusal to grant a jury trial is harmless error only if the record shows that no material issues of fact exist and an instructed verdict would have been justified. *Id.* at 372.

Here, the record reflects relator filed his jury demand on April 26, 2021, more than thirty days before the June 22, 2021 bench trial was to begin, and paid the jury fee. The record does not reflect any support to overcome the presumption that the jury demand was made a reasonable time before trial. Accordingly, we conclude the trial court abused its discretion by denying relator’s jury demand.

The trial court's error in denying relator's demand for a jury trial could be remedied on appeal, following a bench trial and final judgment. *See Halsell*, 810 S.W.2d at 372 (reversing trial court judgment for refusal to grant jury trial and remanding for new trial). But we conclude that appeal from a bench trial would not be adequate under the circumstances of this case. In this situation, both parties would be required to endure a trial and its attendant expenses for naught. *See also In re McAllen Med. Ctr.*, 275 S.W.3d at 466. More importantly, the child affected by the underlying cause should not suffer the delay of a second trial before parental rights and obligations can be established. *See Proffer v. Yates*, 734 S.W.2d 671, 673 (Tex. 1987) (orig. proceeding).

CONCLUSION

We conditionally grant relator's petition for writ of mandamus. We order the trial court to vacate its June 17, 2021 order denying relator's jury demand and direct the trial court to grant relator's jury demand. We are confident the trial court will comply, and the writ will issue only if the trial court fails to comply.

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

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