

DENY and Opinion Filed January 31, 2022



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

No. 05-21-00683-CV

**IN RE: JUAN ANDRES CUELLAR, OLDCASTLE MATERIALS TEXAS,
INC, F/K/A APAC-TEXAS, INC., OLDCASTLE PAYROLL INC., F/K/A
APAC, INC. AND APAC HOLDINGS, INC., Relators**

**Original proceeding from the 68th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-17-15831**

MEMORANDUM OPINION

Before Justices Osborne, Pedersen, III, and Goldstein
Opinion by Justice Goldstein

Relators filed a petition for writ of mandamus on August 10, 2021, challenging the trial court's oral ruling of July 26, 2021, excluding relator's testifying expert, Greg Money and precluding other testifying experts from relying on Money's analysis.¹

Entitlement to mandamus relief requires relator to show that the trial court clearly abused its discretion and that he lacks an adequate appellate remedy. *In re*

¹ We note, without comment, the parties' conflation and obfuscation of applicable procedural rules and legal theories in an effort to address the consequences of *In Re Allstate Indem. Co.*, 622 S.W.3d 870 (Tex. 2021) (orig. proceeding). The concurring opinion endeavors to provide clarity and guidance.

Prudential Ins. Co., 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). “Mandamus actions based upon a court’s oral pronouncements are generally discouraged.” *In re Rhew*, No. 05-16-00411-CV, 2016 WL 1551724, at *1 (Tex. App.—Dallas Apr. 15, 2016, no pet.) (citing *In re Bledsoe*, 41 S.W.3d 807, 811 (Tex. App.—Fort Worth 2001, orig. proceeding)). Nevertheless, an oral order by a trial judge may be considered on mandamus only if it is adequately shown by the trial court record. *Id.* (citing *In re Winters*, No. 05–08–01419–CV, 2008 WL 4816379, at *1 (Tex. App.—Dallas Nov. 6, 2008, orig. proceeding)). “An oral ruling is subject to mandamus review only if it is clear, specific, and enforceable.” *Id.* (citing *Bledsoe*, 41 S.W.3d at 811; *see also In re Kelton*, No. 12–11–00355–CR, 2011 WL 5595219, at *1 (Tex. App.—Tyler Nov. 17, 2011, orig. proceeding) (mem. op.) (oral ruling is not subject to mandamus review unless the ruling is clear, specific, enforceable, and adequately shown by the record)). “An appellate court can determine whether an oral order meets these criteria by reviewing the reporter’s record from the hearing.” Here, the reporter’s record of July 26, 2021, reflects the trial court’s oral order. Under these circumstances, we may appropriately review the trial court’s ruling. *See id.*

We have reviewed relator’s petition, attached appendices, and the reporter’s record transcribing the June 28, 2021, July 2, 2021, and July 26, 2021, hearings on real party in interest’s motion to exclude/strike expert witnesses regarding medical expenses. We conclude relator has failed to demonstrate an entitlement to

mandamus relief. Accordingly, we deny the petition for writ of mandamus. *See*
TEX. R. APP. P. 52.8(a).

/Bonnie Lee Goldstein/
BONNIE LEE GOLDSTEIN
JUSTICE

Concurring, J. Pedersen

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