

Opinion issued November 13, 2014



In The
Court of Appeals
For The
First District of Texas

NO. 01-14-00838-CV

IN RE JOSEPH ANDRE DAVIS, Relator

Original Proceeding on Petition for Writ of Habeas Corpus

MEMORANDUM OPINION

Relator Joseph Andre Davis, acting pro se, has filed a petition for writ of habeas corpus requesting that we compel the trial court to vacate (1) a temporary restraining order issued against relator and (2) an order in a suit to modify the

parent-child relationship granting the maternal grandparents temporary custodial managing conservatorship of relator's child.¹

The circumstances under which this court has original habeas jurisdiction are narrow. Specifically, this court has original jurisdiction to issue a writ of habeas corpus in civil matters only when it appears that a person is restrained in his liberty "by virtue of an order, process, or commitment issued by a court or judge because of the violation of an order, judgment, or decree previously made, rendered, or entered by the court or judge in a civil case." TEX. GOV'T CODE ANN. § 22.221(d) (West 2004). Thus, an original habeas corpus proceeding in our Court is a collateral attack on a contempt decree. *See Ex parte Rohleder*, 424 S.W.2d 891, 892 (Tex. 1967).

Here relator has not demonstrated that the relief he requests is authorized by § 22.221(d) because relator has not shown that the complained of orders arose from his being held in contempt. *See In re McLane*, No. 01-08-00763-CV, 2009 WL 4358857, at *1 (Tex. App.—Houston [1st Dist.] Nov. 30, 2009, no pet.) (dismissing habeas petition in child custody case for lack of jurisdiction because relator failed to demonstrate that orders arose from being held in contempt); *see also In re Barnard*, No. 09-13-00150-CV, 2013 WL 1790240, at *1 (Tex. App.—

¹ The underlying case is *In the Interest of J.A.D.*, cause number 1997-09681, pending in the 245th District Court of Harris County, Texas, the Honorable Roy L. Moore presiding.

Beaumont April 25, 2013, no pet.) (“This Court lacks original jurisdiction of a habeas proceeding for the return of a child.”). Accordingly, this Court lacks original jurisdiction to issue a writ of habeas corpus under the facts presented. *See* TEX. GOV’T CODE ANN. § 22.221(d); *In re McLane*, 2009 WL 4358857, at *2.

We note that there is no indication that relator has filed an application for a writ of habeas corpus for return of the child with the trial court. *See* TEX. FAM. CODE. ANN. § 157.371(a) (West 2014) (“The relator may file a petition for a writ of habeas corpus in either the court of continuing, exclusive jurisdiction or in a court with jurisdiction to issue a writ of habeas corpus in the county in which the child is found.”). It is well-established that a trial court’s order granting or denying a writ of habeas corpus in a child-custody case is not an appealable order. *See, e.g., Gray v. Rankin*, 594 S.W.2d 409, 409 (Tex. 1980). However, mandamus may lie to correct the erroneous denial of a habeas petition seeking possession of a child under Chapter 157 of the Family Code. *See In re Kubankin*, 257 S.W.3d 852, 858 (Tex. App.—Waco 2008, no pet.); *In re deFilippi*, 235 S.W.3d 319, 322 (Tex. App.—San Antonio 2007, no pet.).

We dismiss the petition for writ of habeas corpus for lack of jurisdiction.

PER CURIAM

Panel consists of Justices Massengale, Brown, and Huddle.