

Opinion issued November 25, 2015



In The
Court of Appeals
For The
First District of Texas

NO. 01-15-00970-CV

IN RE N.T., Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, N.T., has filed a petition for a writ of mandamus, challenging an Order for Detention in a juvenile proceeding.¹ In two issues, relator contends that respondent, the Honorable John Phillips, abused his discretion by signing a void order for detention without making any of the statutorily required findings to support detention. *See* TEX. FAM. CODE ANN. § 54.01(e) (Vernon 2014) (providing

¹ The underlying proceeding is *In the Matter of N.T.*, cause number 2015-06245J, in the 314th District Court of Harris County, the Honorable John Phillips presiding.

child shall be released from detention unless juvenile court finds one of five listed circumstances supports detention); *In re Hall*, 286 S.W.3d 925, 929 (Tex. 2009) (citing TEX. FAM. CODE ANN. § 54.01(e)) (stating, following detention hearing, court must release child unless it finds one of five listed circumstances supports detention).

Within the petition, relator asserts that after his counsel requested a record of the detention hearing, respondent replied, “you don’t have a right to a record” and no record would be made. The Family Code requires that all juvenile judicial proceedings be recorded, “except detention hearings.” TEX. FAM. CODE ANN. § 54.09 (Vernon 2014); *see In re M.R.R., Jr.*, 2 S.W.3d 319, 327 (Tex. App.—San Antonio 1999, no pet.). However, “[u]pon request of any party, a detention hearing *shall* be recorded.” TEX. FAM. CODE ANN. § 54.09 (emphasis added). From the petition, we cannot tell whether the trial court conducted an evidentiary hearing. *See id.* § 54.01(c) (Vernon 2014) (providing, at detention hearing, court may consider “written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses”). Nor can we tell whether relator timely and properly requested that the detention hearing be recorded. *See Benjamin v. Benjamin*, No. 01-10-01003-CV, 2013 WL 4507848, at *2 (Tex. App.—Houston [1st Dist.] Aug. 22, 2013, no pet.) (mem. op.)

(citing *Nabelek v. Dist. Attorney of Harris Cnty.*, 290 S.W.3d 222, 231 (Tex. App.—Houston [14th Dist.] 2005, pet. denied)).

Conclusion

We deny the petition.

Terry Jennings
Justice

Panel consists of Justices Jennings, Keyes, and Bland.