

Petition for Writ of Mandamus Denied and Opinion filed February 25, 2016.



In The

Fourteenth Court of Appeals

NO. 14-15-00878-CV

IN RE DANA LYNN GUEFEN, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
247th District Court
Harris County, Texas
Trial Court Cause No. 2008-53787**

MEMORANDUM OPINION

On October 14, 2015, relator Dana Lynn Guefen filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. § 22.221 (West 2004); *see also* Tex. R. App. P. 52. In the petition, relator asks this court to compel the Honorable John Schmude, presiding judge of the 247th District Court of Harris County, to vacate: (1) the order dated April 29, 2015 that discharges Dr. Ramon Laval, Ph.D.

as the custody evaluator in this child custody proceeding, and (2) the order dated August 21, 2015 that prohibits Dr. Laval from testifying and excludes all of his prior testimony, records, testing, findings, reports, raw data, and work product.

To obtain mandamus relief, a relator must show both that the trial court clearly abused its discretion and that relator has no adequate remedy by appeal. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). An appellate remedy is not inadequate merely because it might involve more expense or delay than obtaining a writ of mandamus. *In re Ford Motor Co.*, 988 S.W.2d 714, 721 (Tex. 1998) (orig. proceeding). Appeal from a trial court’s discovery order is not adequate if: (1) the appellate court would not be able to cure the trial court’s error on appeal; (2) the party’s ability to present a viable claim or defense is vitiated or severely compromised; or (3) missing discovery cannot be made a part of the appellate record. *Id.*; *In re Eurecat US, Inc.*, 425 S.W.3d 577, 583 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding). For example, in *In re Thuesen*, 14-13-00174-CV, 2013 WL 1461790 (Tex. App.—Houston [14th Dist.] Apr. 11, 2013, orig. proceeding), our court denied mandamus relief because the relator did not establish that the trial court’s denial of a Rule 204.1 motion for mental examinations severely compromised the relator’s ability to present his defense. *Id.* at *3 (citing *In re Ford*). See also *In re SDI Indus., Inc.*, 13-09-00128-CV, 2009 WL 781562, at *2 (Tex. App.—Corpus Christi Mar. 23, 2009, orig. proceeding) (denying mandamus relief for the trial court’s striking of expert witnesses where the relator had other experts who could testify).

Although it appears that Dr. Laval’s testimony, as the only court appointed expert, would be helpful to relator, she has not established that the exclusion of Dr.

Laval vitiates or severely compromises her ability to present a viable claim or defense. Relator has at least one expert, Dr. Jonathan Gould, who is prepared to opine on the same subjects as Dr. Laval.

Relator has not established that she is entitled to mandamus relief. We therefore deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Boyce, Busby, and Brown.