

**Petition for Writ of Mandamus Denied and Memorandum Opinion filed
February 22, 2018.**



In The

Fourteenth Court of Appeals

NO. 14-18-00096-CV

IN RE C.M., Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
257th District Court
Harris County, Texas
Trial Court Cause No. 2013-48430**

MEMORANDUM OPINION

On August 18, 2017, the Honorable Deborah Patterson, the associate judge of the 257th District Court of Harris County, Texas, signed an order denying relator's motion for enforcement. Relator C.M. filed, on January 26, 2018, a petition for writ of mandamus, challenging the August 18, 2017 order. On February 1, 2018, we dismissed relator's petition for lack of mandamus jurisdiction over the associate

judge in that proceeding. *See In re Montelongo*, No. 14-18-00053-CV, 2018 WL 650456, at *1 (Tex. App.—Houston [14th Dist.] Feb. 1, 2018, orig. proceeding) (mem. op.).

On February 6, 2018, relator filed the current petition for writ of mandamus in this court.¹ Relator asks this court to compel the Honorable Judy Warne, presiding judge of the 257th District Court of Harris County, to vacate the associate judge’s August 18, 2017 order denying relator’s motion for enforcement and sign a new order denying the motion. Relator, however, has not asked the district judge to set aside the August 18, 2017 order and sign a new order.

Mandamus relief generally requires a predicate request for action and a refusal of that request. *In re Le*, 335 S.W.3d 808, 814 (Tex. App.—Houston [14th Dist.] 2011, orig. proceeding). Such requirement is excused when the request would have been futile and the trial court’s refusal little more than a formality. *In re RH White Oak, LLC*, 442 S.W.3d 492, 503 n.5 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding [mand. denied]). “To determine whether a request would have been futile, appellate courts examine whether the request would have added anything for the court’s consideration.” *In re Brown*, 277 S.W.3d 474, 483 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding) (plurality op.).

Asking the district judge to set aside the associate judge’s order and to sign a new order would add something for the district judge’s consideration in light of our prior opinion dismissing relator’s first petition for lack of jurisdiction over the

¹ *See* Tex. Gov’t Code Ann. § 22.221 (West Supp. 2017); *see also* Tex. R. App. P. 52.

associate judge. There is nothing in the record to suggest that the district judge would not consider such a request. Therefore, relator has not shown that asking the district judge to set aside the associate judge's August 18, 2017 order and sign a new order denying the motion for enforcement would be futile. *See In re Coppola*, No. 16-0723, —S.W.3d —, 2017 WL 6390965, at *3 (Tex. Dec. 15, 2017) (orig. proceeding) (per curiam) (denying alternative request for relief because the relators had not challenged ripeness in the trial court and had not argued or shown that the facts presented one of the rare occasions in which the predicate-request requirement should be relaxed).

Accordingly, relator has not established that she is entitled to mandamus relief. Because relator did not first request the relief she seeks in her petition from the trial court, we deny the petition without prejudice to refile after the issues presented in the petition have been presented to and ruled on by the trial court.

PER CURIAM

Panel consists of Justices Boyce, Jamison, and Brown.