

Petition for Writ of Mandamus Conditionally Granted and Memorandum Opinion filed August 18, 2022.



In The

Fourteenth Court of Appeals

NO. 14-22-00154-CV

IN RE A.M.C., Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
308th District Court
Harris County, Texas
Trial Court Cause No. 2015-23453**

MEMORANDUM OPINION

On March 9, 2022, relator A.M.C. (“Mother”) filed a petition for writ of mandamus in this court. *See* Tex. Gov’t Code Ann. § 22.221; *see also* Tex. R. App. P. 52. In the petition, relator asks this court to compel the Honorable Gloria E. Lopez, presiding judge of the 308th District Court of Harris County, to set aside her

December 16, 2021 order transferring the underlying case to Galveston County as void. We conditionally grant the petition.

BACKGROUND

The trial court acquired continuing exclusive jurisdiction over the underlying case when it signed the final decree of divorce on June 24, 2015. The trial court, on November 13, 2020, signed an order enforcing Father's child support and medical support obligations. The trial court found that Father was in contempt and ordered him committed to jail for 180 days, but suspended his sentence and placed him on community supervision conditioned on strict compliance with specified terms and conditions. On May 27, 2021, the Harris County Domestic Relations Office moved to revoke Father's community supervision. On June 6, 2021, Mother signed a waiver of service with regard to the motion to revoke community supervision. On September 2, 2021, the trial court signed an agreed order concerning community supervision.

Claiming that the principal residence of the children had been in Galveston County since July 2019, Mother filed a motion to transfer to Galveston County on September 7, 2021, and a first amended motion to transfer on September 8, 2021. Mother did not file any pleadings requesting modification or enforcement at the time of the filing of the motion to transfer or the first amended motion to transfer. Father was personally served with the first amended motion to transfer on September 22, 2021.

On October 20, 2021, Mother filed a motion for entry of order on the motion to transfer, which was set for hearing by submission on November 5, 2021. The trial court made a docket entry on November 6, 2021, granting the motion for entry and noting: "No controverting affidavit filed as required by statute." On November 11,

2021, the trial court made another docket entry: “Upon further review, the case is disposed. It seems as though Party has failed to pay fees for a Motion to Transfer.” The next action taken by the court was the December 16, 2021 signing of the order transferring the case to Galveston County.

Mother subsequently realized that the motion to transfer and first amended motion to transfer had been filed without any underlying pleading such as a motion to modify or motion to enforce. On December 21, 2021 Mother filed a motion to set aside the transfer order. Mother stated that the last final order was the agreed order concerning community supervision on September 2, 2021, and Mother did not file her motion to transfer venue until September 7, 2021, and first amended motion to transfer venue on September 8, 2021. Contemporaneously filed with the motion to set aside the transfer order was Mother’s petition to modify the parent-child relationship and a motion to transfer. On December 26, 2021, the trial court denied the motion to set aside the transfer order.

On January 3, 2022, Mother filed a motion to reconsider, in which she argued that the transfer order is void because it was signed outside of the trial court’s plenary power. Mother stated that she was not waiving her right to a mandatory transfer of venue on any subsequent filings of a petition to modify the parent-child relationship, but that she was prepared to file a petition in a suit to modify the parent-child relationship contemporaneously with a timely motion to transfer venue as soon as the current transfer issue is resolved.

On February 2, 2022, the trial court signed the order denying the motion to set aside the transfer order and the motion to reconsider.

Mother brings this mandamus proceeding, asking this court to compel the trial court to set aside its December 16, 2021 transfer order as void.

STANDARD OF REVIEW

To obtain mandamus relief, a relator generally must show both that the trial court clearly abused its discretion and that the relator has no adequate remedy by appeal. *In re C.J.C.*, 603 S.W.3d 804, 811 (Tex. 2020) (orig. proceeding). Trial courts have no discretion in determining what the law is or applying the law to the facts. *In re Allstate Indem. Co.*, 622 S.W.3d 870, 875–76 (Tex. 2021) (orig. proceeding). If an order is void, it is not necessary for the relator to show that she does not have an adequate remedy by appeal. *In re Sw. Bell Tel. Co.*, 35 S.W.3d 602, 605 (Tex. 2000) (orig. proceeding) (per curiam).

ANALYSIS

A court acquires continuing, exclusive jurisdiction over the matters in connection with a child on the rendition of a final order. Tex. Fam. Code § 155.001. If a suit to modify or a motion to enforce an order is filed in the court having continuing exclusive jurisdiction of a suit, the court shall, on the timely motion of a party and within the time prescribed, transfer the proceeding to another county in Texas if the child has resided in the other county for six months or longer. *Id.* § 155.201(b). A motion to transfer by a petitioner or movant is timely if it is filed at the time the initial pleadings are filed. *Id.* § 155.204(b). A motion to transfer by another party is timely if it is made on or before the first Monday after the 20th day after the date of service of citation or notice of the suit or before the commencement of the hearing, whichever is sooner. *Id.*

Assuming that the proceeding to revoke Father’s community supervision, which was filed on May 27, 2021, is an enforcement proceeding under section 155.201(b), Mother, as “another party” was required to file the motion to transfer by the first Monday after the 20th day she was served with the motion to revoke.

Mother signed the waiver of service on June 6, 2021. The deadline for Mother to timely file her motion to transfer was June 28, 2021. Mother did not file her motion to transfer and first amended motion to transfer until September 7, 2021, and September 8, 2021, respectively. Therefore, her motion to transfer was not timely.

An untimely motion to transfer gives a trial court no authority to transfer a cause to another court. *In re C.G.*, 495 S.W.3d 40, 44 (Tex. App.—Corpus Christi 2016, pet. denied). When a court has continuing and exclusive jurisdiction over a matter, any order or judgment issued by another court related to the same matter is void. *In re Ron*, 582 S.W.3d 486, 491 n.1 (Tex. App.—Houston [14th Dist.] 2018, orig. proceeding [mand. denied]).

In light of Mother’s untimely motion to transfer, the trial court had no authority to transfer the case to Galveston County and the transfer order is void.

CONCLUSION

We hold that the trial court abused its discretion by transferring the case to Galveston County and denying Mother’s motion to set aside the transfer order and motion to reconsider. Because the December 16, 2021 order is void, Mother need not show that she does not have an adequate remedy by appeal. Accordingly, we conditionally grant Mother’s petition for writ of mandamus and direct the trial court to set aside its December 16, 2021 order transferring the case to Galveston County. We are confident the trial court will act in accordance with this opinion and the writ will issue only if the court fails to do so.

PER CURIAM

Panel consists of Justices Wise, Poissant, and Wilson.