

**Petition for Writ of Mandamus Conditionally Granted and Memorandum Opinion filed June 30, 2022.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-22-00174-CV**

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**IN RE NATTHADEUS GILLESPIE, Relator**

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**ORIGINAL PROCEEDING  
WRIT OF MANDAMUS  
280th District Court  
Harris County, Texas  
Trial Court Cause No. 2018-72093**

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**MEMORANDUM OPINION**

On March 14, 2022, relator Natthadeus Gillespie 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 Barbara Stalder, presiding judge of the 280th District Court of Harris County, to set aside the trial court's November 23, 2021 oral order denying relator's motion to

review and vacate protective order, and instruct the trial court to conduct an evidentiary hearing on his motion.

### **BACKGROUND**

On November 2, 2018, relator and the real party in interest entered into an agreed, five-year protective order that restricted relator's conduct towards the real party in interest and relator's children. Relator noted on the protective order that he "does not admit to committing family violence, he only agrees to comply with this Order." Prior to its expiration, on October 13, 2021, relator moved to vacate the protective order. In his motion, relator asserted that "there is not a continuing need for the Order. I have seen my children on a regular basis over the course of this protective order, have had them on weekends and have been around their mother without incident or any issues of aggression or physical interaction."

The trial court set a hearing by Zoom on relator's motion to vacate for November 23, 2021. The trial court, however, refused to allow relator to put on any evidence in support of his motion during the hearing. The trial court orally denied relator's motion to vacate. The trial court has not signed an order denying relator's motion.

Relator brought this mandamus proceeding challenging the trial court's oral denial of his motion to vacate. In his petition, relator argues the trial court abused its discretion by "rendering judgment" against relator without allowing him the opportunity to present evidence. Relator further contends that he does not have an adequate remedy by appeal.

On March 25, 2022, the Court sent a notice to the real party in interest, requesting that she respond to relator’s petition for writ of mandamus by April 29, 2022. The notice was returned to the Court on April 6, 2022, with the notations “return to sender,” “insufficient address,” and “unable to forward.” To date, the real party in interest has not filed a response to the petition for writ of mandamus.

### **MANDAMUS STANDARD OF REVIEW**

Ordinarily, to be entitled to a writ of mandamus, the relator must show that the trial court clearly abused its discretion, and that the relator lacks an adequate remedy by appeal. *In re Dawson*, 550 S.W.3d 625, 628 (Tex. 2018) (original proceeding) (per curiam). A trial court clearly abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law or if it clearly fails to analyze the law correctly or apply the law correctly to the facts. *In re H.E.B. Grocery Co., L.P.*, 492 S.W.3d 300, 302–03 (Tex. 2016) (orig. proceeding) (per curiam); *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005) (orig. proceeding) (per curiam).

Courts are to assess the adequacy of an appellate remedy by balancing the benefits of mandamus review against the detriments. *In re Team Rocket, L.P.*, 256 S.W.3d 257, 262 (Tex. 2008) (orig. proceeding). Because this balance depends heavily on circumstances, it must be guided by analysis of principles rather than simple rules that treat cases as categories. *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 464 (Tex. 2008) (orig. proceeding). In evaluating benefits and detriments, we consider whether mandamus will preserve important substantive and procedural rights from impairment or loss. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004) (orig. proceeding).

## ANALYSIS

### A. ABUSE OF DISCRETION

Relator maintains that the trial court abused her discretion by refusing to allow him to present evidence in support of his motion to vacate the protective order. Parents have a fundamental liberty interest “in the care, custody, and management of their child.” *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *see In re N.G.*, 577 S.W.3d 230, 234 (Tex. 2019); *In re V.K.*, 607 S.W.3d 471, 477-78 (Tex. App.—Houston [14th Dist.] 2020, orig. proceeding). This fundamental liberty interest “does not evaporate simply because they have not been model parents. . . .” *Santosky*, 455 U.S. at 753. Thus, relator has a liberty interest in the care, custody, and control of his children that is entitled to due process.

At a minimum, due process requires notice and an opportunity to be heard “at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *see Univ. of Tex. Med. Sch. at Houston v. Than*, 901 S.W.2d 926, 930 (Tex. 1995); *V.K.*, 607 S.W.3d at 477. In this case, although a hearing was noticed and commenced, the trial court deprived relator of his right to be heard. As set forth in the reporter’s record, before allowing relator to present evidence in support of his motion to vacate, the trial court asked relator if he admitted to doing the things alleged in the real party in interest’s affidavit, which relator denied. Thereafter, the following exchange occurred between relator’s counsel and the trial court:

RELATOR’S COUNSEL: May I speak?

THE COURT: No, you can’t. Not yet because I’m not done. Counsel, don’t take that attitude with me. That’s not very nice.

RELATOR'S COUNSEL: Your Honor, I'm not taking an attitude.

THE COURT: You're rolling your eyes. You're rolling your eyes and that's rude. This gentleman agreed to five years. I went over the -- Judge Goodden [sic] went over it with him. He knew what he was agreeing to at that time. There may not have been any incidences since there -- since then, but until this gentleman can own up to what he's done, I'm not convinced he's changed. I'm not convinced this protective order is not still necessary. So I'm denying it. Thank you all. Have a good day.

RELATOR'S COUNSEL: I don't even get to speak, Your Honor, or find out from [real party in interest] if she finds a need for the order? Even though they've been interacting --

THE COURT: The Court decides whether or not it is needed. It is not whether the parties decide it's needed.

RELATOR'S COUNSEL: I understand. But we didn't even get a chance to put on evidence. We didn't even get a chance to show the Court they've been interacting about 50 times every year since then.

THE COURT: And that's fine. And that's fine, [relator's counsel]. But when I asked Mr. Gillespie the most important questions of all of whether or not he did these things, he denied it. That means more than anything.

RELATOR'S COUNSEL: Your Honor, did you review on the original protective order, what was written in the order by Mr. Gillespie at that time?

THE COURT: That he denies the allegations but agrees to comply with the order. That is standard language. Very standard language. I do it every single day. Do it every day.

RELATOR'S COUNSEL: Okay, Your Honor. We will just file an appeal. Thank you, Your Honor.

THE COURT: Of course. I hope you do. Thank you.

In refusing to allow relator to present evidence in support of relator's motion to vacate the protective order, including testimony from the real party in interest and exhibits showing communication between relator and the real party in interest, relator was not afforded a meaningful opportunity to be heard. As such, the trial court violated relator's constitutional due process rights. Based on the record before us, we conclude that relator has shown he is entitled to relief.

**B. NO ADEQUATE REMEDY BY APPEAL**

Relator asserts that he has no adequate remedy by appeal. In determining whether relator has an adequate remedy by appeal, we assess the adequacy of an appellate remedy by balancing the benefits of mandamus review against the detriments. *See Team Rocket, L.P.*, 256 S.W.3d at 262. This includes considering whether mandamus will preserve important substantive and procedural rights from impairment or loss. *See Prudential Ins. Co. of Am.*, 148 S.W.3d at 136.

As set forth above, relator has the right to due process with regard to the care, custody, and control of his children. *See V.K.*, 607 S.W.3d at 480-81 (ordering the trial judge to hold an evidentiary hearing on a motion to vacate a temporary *ex parte* protective order) (citing *N.G.*, 577 S.W.3d at 234). In this case, mandamus relief will preserve relator's fundamental rights by being afforded an opportunity for meaningful participation in a hearing on his motion to vacate the protective order. *See Prudential Ins. Co. of Am.*, 148 S.W.3d at 136. Therefore, the benefits of granting mandamus relief outweigh the detriments. *See Team Rocket, L.P.*, 256 S.W.3d at 262. Accordingly, we conclude that relator does not have an adequate remedy by appeal.

## CONCLUSION

We hold that relator has established that the trial court abused its discretion by refusing to allow relator to submit evidence in support of relator's motion to vacate at the Zoom hearing held on November 23, 2021, and that relator has no adequate remedy by appeal. Therefore, we conditionally grant the petition, and direct the trial court to vacate its November 23, 2021 oral order denying relator's motion to vacate the protective order. We further direct the trial court to conduct a live, evidentiary hearing<sup>1</sup> on relator's motion to vacate the protective order, allowing relator the opportunity to present evidence in support of his motion. 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 Jewell, Zimmerer, and Hassan.

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<sup>1</sup> The live hearing can be scheduled either in-person or by the use of video-conferencing technology.