



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-20-00160-CV

IN RE MARTIN VILLEGAS, RELATOR

Original Proceeding Arising from the 242nd District Court
Hale County, Texas
Trial Court No. B41429-1702; Honorable Kregg Hukill, Presiding

July 13, 2020

MEMORANDUM OPINION

Before QUINN, C.J., and PIRTLE and PARKER, JJ.

In this original proceeding, Relator, Martin Villegas, seeks to set aside the trial court's *Nunc Pro Tunc Order on Respondent's/Movant's Motion for New Trial*, signed July 25, 2020, purporting to grant a new trial in favor of the Real Party in Interest, Rosemary Holguin, in a proceeding originally filed by Villegas, seeking modification of the parent-child relationship of a child born to the marriage of Villegas and Holguin. Based on the reasoning that follows, we deny Villegas's petition for writ of mandamus.

BACKGROUND

Villegas and Holguin were divorced by an order of the trial court on August 1, 2017. The *Decree of Divorce* named Villegas and Holguin as joint managing conservators of one child, A.G.H.V., a female. Holguin was granted the exclusive right to establish the child's domicile. The order also provided for standard periods of possession and access.¹ In June 2019, Villegas filed a *Motion to Modify* seeking a modification of the periods of possession and access. After Holguin was served, on July 19, 2019, Villegas and Holguin appeared before the trial court and announced an agreement for the temporary modification of terms and conditions of possession and access, so as to provide that each parent would have possession during alternate weeks. Although a temporary order was never signed (or, at least, none was provided to this court), the parties began to exchange possession of the child in accordance with that arrangement.

On December 10, 2019, Villegas filed his *First Amended Petition to Modify Parent-Child Relationship* with the trial court. By this amended pleading, Villegas sought appointment as joint managing conservator with the exclusive right to establish A.G.H.V.'s primary residence. Villegas also sought to modify the temporary alternating-week possession arrangement to that of a standard possession order. Although Holguin was served with a copy of the amended pleadings in December, she admitted that she never read it before the final hearing.

On February 27, 2020, the parties appeared before the trial court for the purpose of a final hearing on Villegas's motion to modify. Villegas was represented by legal

¹ The record reflects that two children were born during the marriage; however, the trial court found that one child was not the child of Villegas.

counsel; however, Holguin was not. When the case was called by the trial court, both Villegas's counsel and Holguin announced ready to proceed. After announcing that this was a custody proceeding in which Villegas was seeking primary authority to establish the child's domicile, Villegas's counsel called four witnesses: A.G.H.V.'s school teacher (Stephanie Borrego), her counselor (Amy Kellison), Martin Villegas, and Martin's new wife (Sabrie Villegas). The testimony outlined some of the educational problems A.G.H.V. was experiencing during the temporary week-on-week-off possession arrangement. Holguin did not testify, nor did she call any witnesses. At the conclusion of the evidence, the trial court announced its ruling. The trial court found a change in circumstances regarding the child's education, continued both parents as joint managing conservators, with Villegas having the right to establish the child's domicile within Hale County and the contiguous counties, entered a standard possession order, terminated Villegas's child support obligation, and ordered Holguin to pay child support. On April 2, 2020, an *Order in Suit Affecting the Parent-Child Relationship* was signed. Villegas has not provided this court with a copy of that order.

On May 1, 2020, Holguin filed a motion for new trial alleging she was misled by Villegas's new wife as to the purpose of the February 27 hearing. After hearing evidence on that motion, the trial court granted the motion "in the interest of justice," and on June 25, 2020, a *Nunc Pro Tunc Order on Respondent's/Movant's Motion for New Trial* was entered granting a new trial. Critical to this opinion, Villegas's petition further alleges that the June 25 *nunc pro tunc* order was subsequently vacated on July 2, 2020; however, a copy of that order has also not been provided to this court.

Acting as relator, Villegas, seeks mandamus relief, alleging the trial court abused its discretion by granting Holguin's motion for new trial. Specifically, Villegas alleges the trial court abused its discretion because its reasons for granting a new trial were (1) not understandable and reasonably specific, (2) legally appropriate according to a well-defined legal standard of a defect that resulted in an improper verdict, and (3) supported by the record. See *In re Columbia Med. Ctr. of Los Colinas, Subsidiary, L.P.*, 290 S.W.3d 204, 213 (Tex. 2009) (orig. proceeding).

MANDAMUS STANDARD OF REVIEW

Mandamus is an extraordinary remedy granted only when a relator can show: (1) the trial court abused its discretion and (2) that no adequate appellate remedy exists. See *In re H.E.B. Grocery Co., L.P.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam). When seeking mandamus relief, a relator bears the burden of proving these two requirements. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). To establish an abuse of discretion, the relator must demonstrate the trial court acted unreasonably, arbitrarily, or without reference to any guiding rules or principles. See *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985). To establish no adequate remedy by appeal, the relator must show there is no adequate remedy at law to address the alleged harm and that the act requested is a ministerial act, not involving a discretionary or judicial decision. *State ex rel. Young v. Sixth Judicial Dist. Court of Appeals*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding). Furthermore, in order to establish a ministerial act, a relator must also show: (1) a legal duty to perform; (2) a demand for performance; and (3) a refusal to act. *Stoner v. Massey*, 586 S.W.2d 843, 846 (Tex. 1979).

ANALYSIS

From the limited record before us, it appears as though Villegas has already been provided the relief which he has requested. Villegas complains about the *Nunc Pro Tunc Order* signed June 25, 2020, granting Holguin a new trial; however, he also alleges the trial court entered an order (not provided) that *vacated* that *Nunc Pro Tunc Order*. This incongruity merely highlights the procedural shortcomings of Villegas's petition. A relator is generally required to bring forward every document that is necessary to establish his claim for relief. See TEX. R. APP. P. 52.7 (requiring a certified or sworn copy of every document that is material to the relator's claim for relief and that was filed in any underlying proceeding); *Dallas Morning News, Inc. v. Fifth Court of Appeals*, 842 S.W.2d 655, 658 (Tex. 1992) (orig. proceeding). This includes a requirement that the relator provide an adequate record to substantiate the allegations contained in the petition seeking mandamus relief. *Dallas Morning News, Inc.*, 842 S.W.2d at 658 (citing *Walker*, 827 S.W.2d at 837). Absent a sufficient record, mandamus relief will not issue. Here, Villegas has not provided us with a record substantiating his allegations, nor has he provided the documents necessary to resolve the apparent conflict created by his own allegation that the trial court vacated the "*Nunc Pro Tunc Order*." For this reason, his petition for mandamus relief is procedurally deficient and must be denied.

CONCLUSION

Villegas's petition for writ of mandamus is denied.

Per Curiam