



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

No. 07-23-00324-CV

IN RE C.N., RELATOR

Original Proceeding
Arising From Proceedings Before the 223rd District Court
Gray, County, Texas
Trial Court No. 40562, Honorable Phil Vanderpool, Presiding

October 27, 2023

MEMORANDUM OPINION

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

In this original proceeding, Relator, C.N. asks this Court to determine if the trial court abused its discretion in issuing a temporary order giving custody of her children at issue to the Texas Department of Family and Protective Services (the “Department”). Following an *ex parte* temporary order granting custody of Relator’s children to the Department, a full adversary hearing was held on September 21, 2022. Relator filed her petition on September 27, 2023, over a year later.

While a writ of mandamus may not be an equitable remedy, equitable principles influence its issuance. *In re Abney*, 486 S.W.3d 135, 138 (Tex. App.—Amarillo 2016,

orig. proceeding). One such principle requires the petitioner to act diligently. *Id.* Unjustified delays in seeking mandamus relief may result in its loss. *Id.* Accordingly, we find, by waiting over a year to file her petition, Relator forfeited her right to seek mandamus. *Id.*; see also *Rivercenter Assocs. v. Rivera*, 858 S.W.2d 366, 367 (Tex. 1993).¹

The petition for writ of mandamus is denied. Because we have resolved this petition, we also vacate and lift the order of this Court staying the underlying proceedings rendered on October 3, 2023.

Alex Yarbrough
Justice

¹ Relator has had several attorneys appointed to her during this proceeding, and she argues, without any evidence in the record, her prior counsel refused to file a petition for mandamus. However, her current counsel was appointed on April 28, 2023, and, even if we were to credit her arguments regarding her prior counsels' refusals, this Court has held repeatedly a months' long delay in seeking relief operates as a forfeiture of the right to seek mandamus. See *Int'l Awards v. Medina*, 900 S.W.2d 934, 935–36 (Tex. App.—Amarillo 1995, no writ) (four-month delay in filing mandamus untimely); *In re Crawford & Co.*, 453 S.W.3d 450, 451 (Tex. App.—Amarillo 2014) (five months too long to file mandamus); *In re Abney*, 486 S.W.3d at 139 (six months too long); *In re McIntire*, No. 07-22-00249-CV, 2023 Tex. App. LEXIS 60, at *4 (Tex. App.—Amarillo Jan. 5, 2023, orig. proceeding) (seven-month delay too long for mandamus).