In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-15-00086-CV

IN RE TARA BROOK TYNDELL

Original Mandamus Proceeding

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

Tara Brook Tyndell seeks to have a suit involving the conservatorship and rights to her son, K.T.W. (the SAPCR[1]) transferred from Hunt County to Jefferson County. She claims she is entitled to that transfer under the Texas Family Code, because a suit to dissolve her marriage (the Divorce Action) to K.T.W.'s father, Zachary Williamson, is pending in Jefferson County. *See* TEX. FAM. CODE ANN. § 155.201(a) (West 2014). Unable to convince the Honorable J. Andrew Bench, presiding judge of the 196th District Court in Hunt County, to order the transfer, Tyndell asks us to issue a writ of mandamus to that court, ordering the transfer. Because without evidence that there was a marriage to be dissolved, Tyndell has not demonstrated her right to a mandatory transfer, we deny her petition.

The record[2] paints a picture of a tangled web of procedural activity.

Tyndell and Williamson are the natural parents of K.T.W. After they ceased to live together, an agreed order in the SAPCR was entered in the Hunt County district court in late 2010. That order appointed Tyndell's aunt and uncle, John and Jennifer Nowell, joint managing conservators, and Tyndell possessory conservator, of K.T.W. Williamson was not identified as the father of K.T.W. in the order.

[1]The SAPCR acronym refers to a suit affecting the parent-child relationship, which can include custody, visitation, and support. *See* TEX. FAM. CODE ANN. § 101.032(a) (West 2014).

[2]Included in the documents filed by Tyndell are certain documents filed in the Divorce Action. We will disregard these documents unless the record affirmatively shows they were either attached to a pleading in the SAPCR or offered into evidence at the motion to transfer hearing.

In March 2011, Tyndell filed a motion to modify the SAPCR order, asking to be named managing conservator and joining Williamson in the suit. In August 2011, Tyndell first sought to transfer the SAPCR to a Jefferson County district court (the Divorce Court), based on the filing of a suit for dissolution of the marriage of the parents of the child in Jefferson County. *See* TEX. FAM. CODE ANN. § 155.201(a). The Nowells filed a response to the motion to transfer and a controverting affidavit[3] on September 2, 2011, alleging that, before filing the Divorce Action, Tyndell had never contended that she was married to Williamson and had always told them that she and Williamson were never married. The Nowells also contended that, until the Divorce Court determined the legality of the alleged marriage, the SAPCR should not be transferred and that the motion to transfer should be abated.

A hearing on Tyndell's motion to transfer was set for September 15, 2011, but was later cancelled due to the illness of Tyndell's counsel. A second setting on the motion for transfer was obtained by Tyndell for February 28, 2012, but this hearing was cancelled by Tyndell's counsel

[3]The controverting affidavit, in pertinent part, states:

> At all times before August 11, 2011, TARA BROOK TYNDELL never contended that she and ZACH WILLIAMSON were married. TARA BROOK TYNDELL has always told me that she and ZACH WILLIAMSON were never married until we received a motion to transfer on August 11, 2011, which indicated that TARA BROOK TYNDELL now claims she was married to ZACH WILLIAMSON.
>
> I controvert and contest a transfer of this suit as a transfer is not in the best interest of the minor child as the child's home, health care providers, and most persons with knowledge of relevant facts regarding this child are in and around the Hunt County, Texas area. A Transfer of the above case would cause great inconvenience, injustice and hardship on my husband, JOHN AUBRY NOWELL, and me and all other persons with knowledge regarding this minor child.
>
> The primary residence of the minor child has been exclusively with JENNIFER ELAINE NOWELL and JOHN AUBRY NOWELL from August 2010 until the present time.
>
> JENNIFER ELAINE NOWELL and JOHN AUBRY NOWELL have had the primary care, control, possession and maintenance of the minor child from August 2010 until the present time.

for unknown reasons. A third setting was obtained by Tyndell for September 13, 2012. On September 6, 2012, the Nowells filed a supplemental response to the motion to transfer. In that pleading, the Nowells again controverted the validity of the marriage, asked for discovery sanctions, and requested the trial court to abate the motion to transfer until the legality of the marriage was addressed. For reasons not in the record, the motion to transfer was not heard September 13. In the next fourteen months, the motion to transfer was set for hearing three times. Each time, the Nowells filed motions alleging that either Tyndell or Williamson had not answered discovery regarding their claimed marriage and asking the trial court to continue and abate the hearing on the motion to transfer until the validity of the marriage was determined by either the SAPCR Court or the Divorce Court. Each time, the trial court granted the Nowells' requested relief and continued the hearing.

On February 14, 2014, Tyndell obtained new trial counsel. On May 28, 2014, Tyndell filed an amended petition to modify the parent-child relationship in the SAPCR Court, requesting to be named joint managing conservator with the Nowells, with standard, unsupervised possession and access. On September 13, 2014, Tyndell filed a motion for mediation, asking the SAPCR Court to order mediation in the SAPCR, which was granted by order dated October 7, 2014.

After mediation was unsuccessful, Tyndell set the final hearing on her amended petition to modify the parent-child relationship for April 30, 2015. On April 15, 2015, Tyndell obtained another new counsel, who immediately set the motion to transfer for hearing on April 28, 2015. On April 23, 2015, the Honorable Larry Thorne, the judge in the Divorce Action, faxed a letter to

the SAPCR Court judge confirming that a suit for the dissolution of the marriage of Tyndell and Williamson was pending in that court. Tyndell filed a motion for continuance of the final hearing on April 24, 2015, based on the recent hiring of her new counsel. The Nowells responded with a motion for sanctions and a motion to strike Tyndell's pleadings.

On April 28, 2015, the SAPCR Court held a hearing on the pending motions. The Nowells immediately objected to hearing Tyndell's motion to transfer first, arguing that this had been abated for lack of discovery. Shortly into the hearing, the SAPCR judge, who was new to the case, recessed the hearing and met with counsel in his office in an attempt "to untangle the web that's been woven" in the case. After returning to the bench, the SAPCR trial judge focused the remainder of the hearing on the failure of Williamson to answer discovery and pay the attorney fees, and the trial court ordered Williamson to do so within two weeks. The motion to transfer was then reset for a May 29, 2015, hearing.

On May 29, 2015, the SAPCR Court heard the motion to transfer. At the hearing, Tyndell did not offer any evidence, but pointed out to the court that there is no dispute that Tyndell and Williamson are the natural parents of K.T.W. and that their Divorce Action had been filed and was currently pending in the Divorce Court. This was not contested by the Nowells, and the court affirmed that the Divorce Action was currently pending. Tyndell then argued that since the filing of the Divorce Action was not controverted, transfer was mandatory. *See id.* Tyndell acknowledged that a controverting affidavit had been filed controverting the legitimacy of the claimed marriage, but informed the trial court that "it's our contention that that is a question for the Court in Jefferson County." The trial court then informed the parties that, since the Divorce

Action was pending, it did not see any legal basis for it to determine the validity of the marriage and that the only issue before it was whether Tyndell had waived her right to a mandatory transfer. Most of the remainder of the hearing consisted of the parties' arguments regarding whether Tyndell had waived her right to transfer because of her actions (such as obtaining an order for mediation and setting her motion to modify for final hearing, failing to timely insist on a hearing on her motion to transfer, and requesting a partial summary judgment in the Divorce Action without serving the Nowells). However, the Nowells also argued that Tyndell's sworn answers to interrogatories, which were admitted into evidence without objection,[4] would support the court finding that there was no marriage between Tyndell and Williamson. In response, Tyndell argued each time that whether there was a valid marriage was a question for the Divorce Court to decide and that it was not for the SAPCR Court to determine. At the end of the hearing the court told the parties:

> THE COURT: . . . . I think I'm going to deny the Motion to Transfer on the following grounds: Number one, that by her behavior in this case in requesting that the Court take action and in requesting that the Court set the matter for final hearing and through her counsel and all those things, that she has waived the mandatory transfer provision from Hunt County to Beaumont, ... Jefferson County. . . . And second, that – I think I'm going to find that based on her failure to proceed and conduct the divorce action in Jefferson County that she – I will find that she has tried to use the mandatory transfer provisions as a tool to manipulate venue. And on that basis I will deny the transfer.

[4]Rule 52.7 of the Texas Rules of Appellate Procedure requires Tyndell, as the relator, to file "a properly authenticated transcript of any relevant testimony from any underlying proceeding, including any exhibits offered in evidence." TEX. R. APP. P. 52.7(2). Although the transcript of the motion to transfer hearing filed by Tyndell shows that Tyndell's answers to interrogatories were admitted into evidence as respondent's Exhibit 3, no exhibits were included in the transcript.

On June 16, 2015, the SAPCR Court entered its order denying the motion to transfer, without stating the basis of the denial.

On July 15, 2015, Tyndell filed a motion to reconsider the denial of the motion to transfer. Attached to the motion was a certified copy of Tyndell's petition for divorce filed in the Divorce Action and her affidavit. In her affidavit, Tyndell swore that she married Williamson on September 13, 2006, that they had a son on July 9, 2008, and that they ceased to live together on August 15, 2010. At the hearing on the motion to reconsider, held on September 8, 2015, Tyndell argued that the SAPCR Court was without jurisdiction to determine the validity of the marriage and therefore, since a suit for dissolution of the marriage had been filed, transfer was mandatory. She also argued that any delay in having the motion to transfer heard was caused by the Nowells and Williamson, and therefore there was no waiver of her right to transfer. Tyndell did not offer any evidence, but merely referred to her affidavit attached to the motion for reconsideration. By order dated September 26, 2015, the SAPCR Court denied the motion to reconsider without stating a basis for its ruling.

Mandamus issues only when the record shows (1) a clear abuse of discretion by the trial court or the failure of the trial court to perform a ministerial act or duty, and (2) the absence of an adequate remedy at law. *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding); *In re Ingram*, 433 S.W.3d 769, 771 (Tex. App.—Texarkana 2014, orig. proceeding). We find a clear abuse of discretion when the trial court "'reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law or it clearly fails to correctly analyze or apply the law."' *Ingram*, 433 S.W.3d at 771 (quoting *In re Olshan Found. Repair Co.*,

328 S.W.3d 883, 888 (Tex. 2010) (orig. proceeding)). Under this standard, when determining applicable law or applying the law to the facts, the trial court has no discretion. *Walker*, 827 S.W.2d at 840; *Ingram*, 433 S.W.3d at 771. When the trial court clearly fails to correctly analyze or apply the law, it abuses its discretion and mandamus may issue. *Walker*, 827 S.W.2d at 840; *Ingram*, 433 S.W.3d at 771. If the trial court expresses an incorrect legal reason for its ruling, "we will nevertheless uphold the order on any other grounds supported by the record." *Luxenberg v. Marshall*, 835 S.W.2d 136, 141–42 (Tex. App.—Dallas 1992, orig. proceeding); *see also In re Estate of Hutchins*, 391 S.W.3d 578, 585 (Tex. App.—Dallas 2012, orig. proceeding); *In re O'Quinn*, 355 S.W.3d 857, 862 (Tex. App.—Houston [1st Dist.] 2011, orig. proceeding); *In re Datamark, Inc.*, 296 S.W.3d 614, 616 (Tex. App.—El Paso 2009, orig. proceeding). When considering a writ of mandamus, "we focus on the result reached by the trial court rather than its reasons." *In re Stevens*, 971 S.W.2d 757, 760 (Tex. App.—Beaumont 1998, orig. proceeding); *In re ExxonMobil Corp.*, 97 S.W.3d 353, 358 n.5 (Tex. App.—Houston [14th Dist.] 2003, orig. proceeding); *Luxenberg*, 835 S.W.2d at 142. "'A trial court cannot abuse its discretion if it reaches the right result, even for the wrong reasons.'"[5] *ExxonMobil Corp.*, 97 S.W.3d at 358 n.5 (quoting

[5]At oral argument and in her post-submission letter brief, Tyndell argued that, in a mandamus proceeding, we cannot consider other factual or legal bases that support the trial court's decision, but rather we must restrict our review to the specific bases recited for the decision under review, citing *In re China Oil & Gas Pipeline Bureau*, 94 S.W.3d 50, 63–64 (Tex. App.—Houston [14th Dist.] 1992, orig. proceeding). Based on this, Tyndell argued that we may consider only whether the trial court abused its discretion in denying the transfer based on waiver. However, in *China Oil*, the trial court had held that China Oil was not entitled to immunity under the Foreign Sovereign Immunities Act of 1976 (FSIA). *Id.* In its order, the trial court specifically and exclusively relied on the statutory waiver exception in the FSIA in rejecting the immunity claim. *Id.* at 64. In our case, however, the trial court's order stated no basis for denying the transfer. A trial court's oral comments from the bench are not a substitute for written findings of fact and conclusions of law, and therefore do not limit the grounds on which a ruling can be upheld. *See In re Doe 10*, 78 S.W.3d 338, 340 n.2 (Tex. 2002). Further, in *China Oil*, when the court of appeals found that the record did not support the trial court's reliance on the waiver exception, the respondent argued that the trial court's decision could also be upheld under the commercial activities exception in the FSIA. The Fourteenth Court of Appeals rejected this

Luxenberg, 835 S.W.2d at 142). Further, it is the relator's burden to provide this Court with a record sufficient to establish her right to mandamus relief. *Walker*, 827 S.W.2d at 837; *In re Pilgrim's Pride Corp.*, 187 S.W.3d 197, 198–99 (Tex. App.—Texarkana 2006, orig. proceeding); *see* TEX. R. APP. P. 52.3, 52.7(a).

Tyndell filed her motion to transfer in the SAPCR pursuant to the mandatory transfer provisions in the Texas Family Code.

> On the filing of a motion showing that a suit for dissolution of the marriage of the child's parents has been filed in another court and requesting a transfer to that court, the court having continuing, exclusive jurisdiction of a suit affecting the parent-child relationship shall, within the time required by Section 155.204, transfer the proceedings to the court in which the dissolution of the marriage is pending. The motion must comply with the requirements of Section 155.204(a).

TEX. FAM. CODE ANN. § 155.201(a). On a proper showing, transfer of the SAPCR under Section 155.201(a) is a mandatory, ministerial duty. *In re M.A.S.*, 246 S.W.3d 182, 183–84 (Tex. App.—San Antonio 2007, orig. proceeding); *Neal v. Avey*, 853 S.W.2d 707, 709 (Tex. App.—Houston [14th Dist.] 1993, writ denied); *Yates v. Gaither*, 725 S.W.2d 529, 531 (Tex. App.—Dallas 1987, orig. proceeding). "Mandamus relief is available to compel the mandatory transfer of a SAPCR

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argument on the basis that the respondent had an adequate remedy at law under the facts of that case: since the trial court had not considered the commercial activities exception, the court reasoned that the respondent could seek relief in the trial court under that exception. Therefore, it had an adequate remedy at law and mandamus relief was not appropriate. *Id.* Tyndell mistakenly relies on additional language in the decision stating that the standard used after a bench trial with no findings of fact and conclusions of law which provides that "all questions of fact are presumed found in support of the judgment and the judgment must be affirmed if it can be upheld on any legal theory raised by the evidence . . . is not the standard of review in a mandamus proceeding." *Id.* First, this language appears in a comment the court made in response to the respondent's argument and is not essential to its holding. In addition, the Court cited no authority for this statement. Finally, the Court's statement appears to contradict not only the authority of other courts of appeal, as seen above, but also its own authority. *See, e.g.*, *In re Ortuno*, No. 14-08-00457-CV, 2008 WL 2855028, at *1 (Tex. App.—Houston [14th Dist.] July 24, 2008, orig. proceeding) (mem. op.) ("Because a trial court cannot abuse its discretion if it reaches the correct result for the wrong reasons, we will uphold the trial court's order on any ground supported by the record."); *ExxonMobil Corp.*, 97 S.W.3d at 358 n.5 (no abuse of discretion if right result reached for wrong reason).

action." *In re Kerst*, 237 S.W.3d 441, 443 (Tex. App.—Texarkana 2007, orig. proceeding) (citing *Proffer v. Yates*, 734 S.W.2d 671, 672 (Tex. 1987) (orig. proceeding)).

The Texas Family Code provides that "[a] motion to transfer under Section 155.201(a) may be filed at any time." TEX. FAM. CODE ANN. § 155.204(a) (West 2014). If no controverting affidavit denying that grounds for the transfer exist is filed within twenty days after service of the motion, then the SAPCR must be transferred without a hearing. TEX. FAM. CODE ANN. § 155.204(c), (d) (West 2014). However, if a controverting affidavit is timely filed, then the SAPCR court must hold a hearing and, if it finds that grounds for the transfer exist, transfer the case to the proper court within twenty-one days. TEX. FAM. CODE ANN. § 155.204(g) (West 2014). Unlike the procedures to determine a motion to transfer under the Texas Rules of Civil Procedure,[6] the Texas Family Code contemplates a full evidentiary hearing, providing that "[o]nly evidence pertaining to the transfer may be taken at the hearing." TEX. FAM. CODE ANN. § 155.204(f) (West 2014); *see In re Phillips*, No. 12-07-00164-CV, 2007 WL 3015461, at *2 (Tex. App.—Tyler Oct. 17, 2007, orig. proceeding) (mem. op.) (under Section 155.204, movant must introduce affidavits, stipulations, testimony, or other evidence at transfer hearing to show grounds for transfer exist and may not rely on verified pleadings, motions, and affidavits attached to pleadings); *In re Nabors*, 276 S.W.3d 190, 194 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding) (rejecting real-party-in-interest's argument that motion to transfer under Family Code is decided on pleadings

[6]A motion to transfer is to be determined "on the basis of the pleadings, any stipulations made by and between the parties and such affidavits and attachments as may be filed by the parties." TEX. R. CIV. P. 87(3)(b). The Texas Family Code's transfer provisions, however, "supplant the Rules of Civil Procedure governing [motions to transfer]." *Leonard v. Paxson*, 654 S.W.2d 440, 441 (Tex. 1983).

and affidavits, not live testimony). The movant has the burden to show that grounds exist for transferring the case to the proposed county. *See Phillips*, 2007 WL 3015461, at *2; *Pratt v. Tex. Dep't of Human Res.*, 614 S.W.2d 490, 493 (Tex. Civ. App.—Amarillo 1981, writ ref'd n.r.e.).

If a controverting affidavit is filed and if, after hearing the motion to transfer, a SAPCR court finds that there are grounds for the transfer, it must transfer the case to the proper court. TEX. FAM. CODE ANN. § 155.204(g). To establish that grounds exist for a mandatory transfer, the movant is required to show "that a suit for dissolution of the marriage of the child's parents has been filed in another court." TEX. FAM. CODE ANN. § 155.201(a); *see M.A.S.*, 246 S.W.3d at 184; *see also In re R.E.A.*, No. 13-10-00557-CV, 2011 WL 3557427, at *3 (Tex. App.—Corpus Christi Aug. 11, 2011, orig. proceeding) (mem. op.) (denial of mandamus when no proof that suit for dissolution of marriage filed in another court). In addition, Section 155.201(a) "presumes the existence of a marriage subject to dissolution before the mandatory venue transfer provisions take effect." *M.A.S.*, 246 S.W.3d at 184. This presumption is necessary to prevent forum shopping and attempts by parties to manipulate venue, as was present in *M.A.S.*

In *M.A.S.*, shortly after the birth of the child in question, his mother gave custody of the child to Serna. A few months later, Serna filed a SAPCR in Bexar County requesting to be named sole managing conservator. *Id.* at 182. The Bexar County court entered temporary orders naming Serna managing conservator and the mother possessory conservator. The father sought custody by filing a SAPCR in Reeves County. In the Reeves County suit, the father alleged in his verified petition that he was not married to the mother at the time of the birth of the child. The mother also filed an affidavit in the Reeves County suit stating she was not presently, nor had she ever been,

married to the father. *Id.* at 183. These documents were also filed as attachments to the father's original answer and motion to transfer in the Bexar County suit. Three days before the final hearing in the Bexar County suit, the father filed a divorce petition in Reeves County and alleged that he and the mother had been married before the child's birth and ceased to live together shortly before the divorce petition was filed. He then notified the Bexar County court of its filing. The Bexar County court declined to transfer the case to Reeves County. *Id.* The father filed a petition for a writ of mandamus in the court of appeals.

The San Antonio Court of Appeals acknowledged that, under Section 155.201(a), "[t]he duty to transfer the SAPCR is considered a mandatory ministerial act on a 'showing that a suit for dissolution of the marriage of the child's parents has been filed in another court.'" *Id.* at 184 (quoting TEX. FAM. CODE ANN. § 155.201(a)). However, the Court noted a key factor:

> By its very terms, the statute requires a certain factual showing before the mandatory duty to transfer a case is triggered. First, only a dissolution of the marriage of both parents of the child involved in the continuing SAPCR suit will mandate transfer. . . . The statute additionally presumes the existence of a marriage subject to dissolution before the mandatory venue transfer provisions take effect.[7]

Id. (quoting TEX. FAM. CODE ANN. § 155.201(a)). The court of appeals noted from the record that the mother and father had judicially admitted in their filings in the Reeves County suit that they were not married and that the allegations in the divorce petition "were directly contrary to all prior assertions of non-marriage." *Id.* This, along with the timing of the filing of the divorce petition, indicated that it was a sham and a tool used to manipulate venue. *Id.* Therefore, the "trial court

[7]Although this may be an accurate statement under the facts present in *M.A.S.*, as well as this case, it would not be true in all cases since a suit for the dissolution of a marriage "includes a suit for divorce or annulment or to declare a marriage void." TEX. FAM. CODE ANN. § 1.003 (West 2006).

reasonably determined that the evidence in the case was contrary to a 'showing that a suit for dissolution of the marriage of the child's parents ha[d] been filed in another court,' and thus the court properly denied the requested motion to transfer." *Id.* at 184–85 (citation omitted).

In this case, it is undisputed that Tyndell and Williamson are the parents of K.T.W. and that the Divorce Suit has been filed. However, the Nowells filed a controverting affidavit that Tyndell and Williamson had never been married, based on statements made by Tyndell to that effect. This placed in issue the existence of a marriage between Tyndell and Williamson that was subject to dissolution. Tyndell, as the movant, had the burden to show its existence. Nevertheless, at both the hearing on her motion to transfer and the hearing on her motion for reconsideration, Tyndell did not offer into evidence any documents, stipulations, testimony, or affidavits showing that a marriage, whether formal or informal, existed.[8] Thus, Tyndell failed to show that grounds existed for mandatory transfer under Section 155.201(a), and we cannot say that the trial court improperly denied the motion to transfer. *Id.*; *Phillips*, 2007 WL 3015461, at *2.

Further, while there was no judicial admission in this case, there may have been some additional evidence to support the Nowells' contention that there was no marriage between Tyndell

[8]While we recognize that the trial court expressed its opinion that it could not determine the validity of the marriage, we do not believe this in any way prevented Tyndell from offering some evidence of the existence of a marriage subject to dissolution. We also recognize that the trial court had a legitimate concern that it might be infringing on the jurisdiction of the Divorce Court. *See, e.g.*, *In the Matter of the Marriage of Allen*, 593 S.W.2d 133, 136–37 (Tex. App.—Amarillo 1979, no writ). However, the trial court was required only to determine whether grounds for the transfer existed. TEX. FAM. CODE ANN. § 155.204(g). Tyndell, as the movant, had the burden to establish that grounds for the transfer existed, which under the facts of this case, required some showing of the existence of the marriage. We see no reason why the trial court, if some evidence of the existence of a marriage subject to dissolution had been offered, could not find that grounds for the transfer existed, without finding that the marriage was valid. Further, in spite of its comments, as seen above, the trial court allowed the Nowells both to argue and to introduce evidence in support of their contention that there was no marriage between Tyndell and Williamson. There is no indication in the record that Tyndell attempted to offer, or that the trial court prevented Tyndell from offering, evidence of a marriage between Williamson and her.

and Williamson. As noted above, the Nowells argued that Tyndell's sworn answers to interrogatories showed there was no marriage between Tyndell and Williamson. These answers to interrogatories were admitted into evidence without objection. However, Tyndell failed to include this exhibit with the transcript of the motion to transfer hearing, as required by Rule 52.7 of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 52.7(a)(2). Without this exhibit, we cannot determine whether the trial court's order is supported by this evidence, which, in turn, prevents us from determining whether the trial court's order, even if improper, was a clear abuse of discretion. *Walker*, 827 S.W.2d at 837.

For these reasons, Tyndell has failed to demonstrate that she is entitled to mandamus relief. We deny her petition.

Josh R. Morriss, III
Chief Justice

Date Submitted: December 9, 2015
Date Decided: January 22, 2016