

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-16-00739-CV**

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**In re Elizabeth Hubbell**

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**ORIGINAL PROCEEDING FROM COMAL COUNTY**

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**MEMORANDUM OPINION**

Relator Elizabeth Hubbell filed a petition for writ of mandamus asking this Court to direct the trial court to vacate its August 16, 2016 default judgment because it is not final. *See* Tex. Gov't Code § 22.221; *see also* Tex. R. App. P. 52.1. Having reviewed the petition and the record, we will deny the petition. We agree that the trial court's default judgment is an interlocutory order, not a final and appealable order. *See In re Burlington Coat Factory Warehouse of McAllen, Inc.*, 167 S.W.3d 827, 829-30 (Tex. 2005); *see also Hubbell v. Mystic Shores Prop. Owners Ass'n*, No. 03-16-00736-CV, slip op. (Tex. App.—Austin Aug. 25, 2017, no pet. h.) (mem. op.). However, Hubbell has not demonstrated that she has no adequate remedy by appeal merely because the default judgment is not final. *See Houston Health Clubs, Inc. v. First Court of Appeals*, 722 S.W.2d 692, 693-94 (Tex. 1986) (holding that trial court retained jurisdiction to set aside interlocutory default judgment and grant new trial); *Craddock v. Sunshine Bus Lines, Inc.*, 133 S.W.2d 124, 126 (Tex. 1939) (establishing factors to be considered on appeal when determining whether default judgment should be set aside); *see also In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004)

(holding that relator must show both trial court's abuse of discretion and that relator has no adequate remedy by appeal to be entitled to mandamus relief). Therefore, we deny Hubbell's petition for writ of mandamus. *See* Tex. R. App. P. 52.8(a).

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Cindy Olson Bourland, Justice

Before Chief Justice Rose, Justices Field and Bourland

Filed: August 25, 2017