

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

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**NO. 03-17-00428-CV**

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**In re Melissa Katherine Harris**

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**ORIGINAL PROCEEDING FROM WILLIAMSON COUNTY**

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**MEMORANDUM OPINION**

This original proceeding arises out of a petition for divorce filed in Williamson County by real party in interest Douglas Duet. Following an evidentiary hearing, the trial court announced that there was no informal marriage between relator Melissa Katherine Harris and Duet and, on June 14, 2017, signed temporary orders outlining the couple’s rights with respect to the custody and support of their child. Harris has now filed a petition for writ of mandamus asking this Court to compel the trial court to vacate its June 14 temporary orders and order that the case be re-filed or transferred to Galveston County, where according to Harris, the child resides. Harris has also filed a motion for temporary relief, requesting a stay of the trial court proceedings pending resolution of her petition.

In support of her petition, Harris cites section 103.001 of the Family Code, entitled “venue for original suit.” Section 103.001 provides that, subject to certain exceptions, an original suit affecting the parent-child relationship (SAPCR) “shall be filed in the county where the child

resides.”<sup>1</sup> Tex. Fam. Code § 103.001. If venue is improper in the court in which an original SAPCR is filed, the court must—“on the timely motion of a party other than the petitioner”—transfer the proceeding to the county where venue is proper. *Id.* § 103.002. Mandamus relief is available to compel a trial court to transfer venue when the grounds for mandatory transfer under section 103.002 are established. *In re Narvaiz*, 193 S.W.3d 695, 699 (Tex. App.—Beaumont 2007, orig. proceeding); *In re Hiles*, No. 03-00-00313-CV, 2000 Tex. App. LEXIS 4595, at \*3 (Tex. App.—Austin 2000, orig. proceeding) (mem. op.) (per curiam).

It is relator’s burden to properly request and show entitlement to mandamus relief. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992); *see also In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004) (mandamus relief is proper to correct clear abuse of discretion when there is no adequate remedy by appeal). In this regard, the relator must provide the reviewing court with a record sufficient to establish his right to mandamus relief. *In re Mendoza*, 131 S.W.3d 167, 168 (Tex. App.—San Antonio 2004, orig. proceeding); *see* Tex. R. App. P. 52.7(a). Here, the record does not show, nor does Harris assert, that she ever filed a motion to transfer venue in the trial court or that the court ever signed a written order denying such a motion. Because the timely filing of a motion is required under section 103.002, we cannot conclude that Harris is entitled to

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<sup>1</sup> Harris acknowledges that one exception to section 103.001’s mandatory venue is when “venue is fixed in a suit for dissolution of a marriage under Subchapter D, Chapter 6.” *See* Tex. Fam. Code § 103.001(a)(2). However, Harris argues that this exception does not apply in this case because the trial court determined that no informal marriage existed. *See In re M.A.S.*, 246 S.W.3d 182, 184 (Tex. App.—San Antonio 2007, no pet.) (concluding that trial court did not err in denying motion to transfer venue in SAPCR proceeding based on pending divorce suit and noting that “[t]he statute presumes the existence of a marriage subject to dissolution before the mandatory venue transfer provisions take effect”).

mandamus relief based on the record before us. The petition for writ of mandamus and motion for temporary relief are denied. *See* Tex. R. App. P. 52.8(a).

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Scott K. Field, Justice

Before Chief Justice Rose, Justices Field and Bourland

Filed: June 30, 2017