

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

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**NO. 03-18-00051-CV**  
**NO. 03-18-00325-CV**

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**In re Bobbi Battishia White**

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**ORIGINAL PROCEEDING FROM BELL COUNTY**

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**MEMORANDUM OPINION**

Relator Bobbi Battishia White filed a pro se petition for writ of mandamus asking this Court to direct the trial court to (1) vacate the temporary restraining order dated July 20, 2016, that removed White’s child from her home; (2) hold “moot” every subsequent order, and (3) reinstate White as the primary custodian of the child pursuant to a 2012 divorce decree. *See* Tex. Gov’t Code § 22.221; *see also* Tex. R. App. P. 52.1. White also filed a motion for temporary emergency relief seeking similar relief. White’s motion asked this Court to order the 2012 divorce decree to be the document governing the child’s custody, to vacate all orders subsequent to the July 2016 restraining order, to return the child to her custody, and to order real party in interest Michael Justin Rogers not to contact her except through counsel.

Based on this record, we deny the petition for writ of mandamus and the motion for temporary emergency relief.<sup>1</sup> *See* Tex. R. App. P. 52.8; *see also Walker v. Packer*, 827 S.W.2d 833,

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<sup>1</sup> These cause numbers, a petition for writ of mandamus and White’s “Motion for Writ of Habeas Corpus, are companion cases to an appeal filed by White, which we have dismissed today for want of jurisdiction. *See White v. Rogers*, No. 03-18-00037-CV (Tex. App.—Austin May 11, 2018,

837 (Tex. 1992) (relator has burden of providing court with sufficient record to establish right to mandamus relief). The clerk's record reflects that the July 2016 temporary restraining order is no longer in effect, rendering White's challenge to it moot. *See Hermann Hosp. v. Tran*, 730 S.W.2d 56, 57 (Tex. App.—Houston [14th Dist.] 1987, no writ) (concluding that all issues on appeal regarding temporary restraining order were rendered moot by order's expiration). Although White acknowledges that the July 2016 temporary restraining order is moot, she asserts that the effect of the order has continued to alienate her from her daughter because subsequent orders were made with the same legal effect and White did not have the opportunity to rebut the allegations against her. The record reflects, however, that subsequent orders, made by agreement or supported by evidence, replaced the July 2016 temporary restraining order, rendering White's complaints about that order moot. *See Andrews v. Smith*, No. 03-01-00402-CV, 2002 WL 1025065, at \*5 (Tex. App.—Austin May 23, 2002, pet. dismiss'd w.o.j.) (mem. op.) (concluding that appellant's complaint about lack of evidentiary support for temporary restraining order was moot when subsequent orders supported by evidence supplanted temporary restraining order).

White also attached to her petition for writ of mandamus a "Motion for Writ of Habeas Corpus," complaining of White's confinement in the Bell County jail on charges of interference with child custody and aggravated kidnapping. *See Tex. Code Crim. Proc. arts. 11.01* (defining writ of habeas corpus as "the remedy to be used when any person is restrained in his

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no pet. h.) (mem. op.). White filed a motion to transfer the clerk's record and the reporter's record from her appeal to the mandamus proceeding, No. 03-18-00051-CV. We grant the motion, and we have reviewed those records in connection with White's petition for writ of mandamus, and sua sponte, we have also reviewed those records in connection with her "Motion for Writ of Habeas Corpus." *See Tex. R. App. P. 2* (allowing suspension of appellate rules for good cause).

liberty”); 11.21 (defining “confinement”), 11.22 (defining “restraint”). White asserts that she is being restrained for violating the temporary restraining order, citing Texas Family Code Section 105.001(f), which states that violating a temporary restraining order rendered under Section 105.001 is punishable by contempt. From the record before us, it does not appear that White is being confined based on a contempt order issued in a civil case. *See* Tex. Gov’t Code § 22.221(d) (providing original habeas jurisdiction to courts of appeals where relator’s liberty is restrained by virtue of order, process, or commitment issued by court or judge in civil case). Based on this record, we deny White’s application for writ of habeas corpus.<sup>2</sup> *See* Tex. R. App. P. 52.8; *see also Walker*, 827 S.W.2d at 837 (relator has burden of providing court with sufficient record to establish right to mandamus relief).

White also complains in her “Motion for Writ of Habeas Corpus” of excessive bond and that her bail should be reduced, but she does not complain of any specific trial-court order. This Court lacks jurisdiction to review interlocutory orders regarding excessive bail or the denial of bail. *Ragston v. State*, 424 S.W.3d 49, 52 (Tex. Crim. App. 2014). This Court also lacks jurisdiction to

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<sup>2</sup> We further note, however, that to the extent White’s application for writ of habeas corpus seeks pretrial relief from confinement based on criminal charges, we do not have jurisdiction to grant the relief that White seeks. This Court has no original habeas corpus jurisdiction in criminal-law matters; our original jurisdiction to entertain applications for writ of habeas corpus extends solely to the actions of judges in civil cases. Tex. Gov’t Code § 22.221(d); *see also Watson v. State*, 96 S.W.3d 497, 500 (Tex. App.—Amarillo 2002, pet ref’d). Our habeas corpus jurisdiction in criminal matters is appellate only. *See* Tex. Gov’t Code § 22.221(d); *see also In re Graham*, No. 03-14-00270-CV, 2015 WL 5781102, at \*1 (Tex. App.—Austin Oct. 2, 2015, orig. proceeding). Original jurisdiction to grant a writ of habeas corpus in a criminal case is vested in the Court of Criminal Appeals, the district courts, the county courts, or a judge of those courts. Tex. Code Crim. Proc. art. 11.05; *see In re Hall*, No. 03-17-00778-CV, 2017 WL 5985541, at \*1 (Tex. App.—Austin Nov. 30, 2017, orig. proceeding).

conduct an original habeas corpus proceeding to reduce a bail bond. *See In re Johnson*, No. 03-13-00826-CV, 2014 WL 259683, at \*1 (Tex. App.—Austin Jan. 16, 2014, orig. proceeding) (mem. op.). Accordingly, we dismiss this portion of White’s “Motion for Writ of Habeas Corpus” for want of jurisdiction.

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Cindy Olson Bourland, Justice

Before Justices Puryear, Pemberton, and Bourland

Filed: May 11, 2018