



NUMBER 13-17-00251-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE JESSIE LEIGH BERNHARD

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Rodriguez and Hinojosa
Memorandum Opinion by Justice Rodriguez**

Relator Jessie Leigh Bernhard filed a petition for writ of mandamus seeking to compel the trial court to vacate emergency temporary orders pertaining to the possession and custody of minor children, C.R.E. and J.A.E. This Court requested that the real parties in interest file a response to the petition for writ of mandamus. Real party Debra Stonebraker filed an affidavit in response and real parties Kay Everett and Albert A. Everett also filed a response to the petition.

Mandamus is an extraordinary remedy. *In re H.E.B. Grocery Co.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam). Mandamus relief is proper to correct a

clear abuse of discretion when there is no adequate remedy by appeal. *In re Christus Santa Rosa Health Sys.*, 492 S.W.3d 276, 279 (Tex. 2016) (orig. proceeding). The relator bears the burden of proving both of these requirements. *In re H.E.B. Grocery Co.*, 492 S.W.3d at 302; *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). An abuse of discretion occurs when a trial court's ruling is arbitrary and unreasonable or is made without regard for guiding legal principles or supporting evidence. *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding); *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012). We determine the adequacy of an appellate remedy by balancing the benefits of mandamus review against the detriments. *In re Essex Ins. Co.*, 450 S.W.3d 524, 528 (Tex. 2014) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004) (orig. proceeding). Where there are disputed areas of fact, mandamus relief is not appropriate. See *In re Pirelli Tire, L.L.C.*, 247 S.W.3d 670, 676 (Tex. 2007) (orig. proceeding); *In re Angelini*, 186 S.W.3d 558, 560 (Tex. 2006) (orig. proceeding).

Mandamus may be appropriate to review issues pertaining to standing in matters arising from temporary orders issued under the Texas Family Code. See, e.g., *In re Scheller*, 325 S.W.3d 640, 642 (Tex. 2010) (orig. proceeding) (per curiam); *In re Lewis*, 357 S.W.3d 396, 403 (Tex. App.—Fort Worth 2011, orig. proceeding); *In re Smith*, 262 S.W.3d 463, 467 (Tex. App.—Beaumont 2008, orig. proceeding). Further, a writ of mandamus is an appropriate means to require a trial court to comply with the family code's jurisdictional requirements. *Powell v. Stover*, 165 S.W.3d 322, 324 (Tex. 2005) (orig. proceeding); *In re Forlenza*, 140 S.W.3d 373, 379 (Tex. 2004) (orig. proceeding); *Geary v. Peavy*, 878 S.W.2d 602, 603 (Tex. 1994) (orig. proceeding).

The Court, having examined and fully considered the petition for writ of mandamus, the responses, and the applicable law, is of the opinion that the relator has not shown herself entitled to the relief sought. Accordingly, we deny the petition for writ of mandamus. See TEX. R. APP. P. 52.8(a),(d).

NELDA V. RODRIGUEZ
Justice

Delivered and filed the
12th day of June, 2017.