



**NUMBER 13-18-00261-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**IN RE JAIME DUNCAN**

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**On Petition for Writ of Mandamus.**

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**MEMORANDUM OPINION**

**Before Justices Rodriguez, Contreras, and Hinojosa  
Memorandum Opinion by Justice Hinojosa<sup>1</sup>**

On May 16, 2018, relator Jaime Duncan filed a petition for writ of mandamus seeking to compel the trial court to vacate an order granting a bill of review. This bill of review proceeding arises from a divorce proceeding between Jaime and real party in interest, Mark Duncan. By first amended petition for bill of review, Mark sought to set aside a final decree of divorce signed on January 9, 2013. On October 13, 2017, the trial

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<sup>1</sup> See TEX. R. APP. P. 52.8(d) (“When granting relief, the court must hand down an opinion as in any other case,” but when “denying relief, the court may hand down an opinion but is not required to do so.”); TEX. R. APP. P. 47.4 (distinguishing opinions and memorandum opinions).

court orally rendered judgment granting the bill of review in favor of Mark and on November 14, 2017, signed the order granting the bill of review. On February 19, 2018, Jaime filed a motion for reconsideration which the trial court denied by order rendered on April 10, 2018.

Mandamus is an extraordinary remedy. *In re H.E.B. Grocery Co.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam). Although mandamus is not an equitable remedy, its issuance is largely controlled by equitable principles. *In re Dorn*, 471 S.W.3d 823, 823 (Tex. 2015) (orig. proceeding); *Rivercenter Assocs. v. Rivera*, 858 S.W.2d 366, 367 (Tex. 1993) (orig. proceeding). One such equitable principle is that “equity aids the diligent and not those who slumber on their rights.” *Callahan v. Giles*, 55 S.W.2d 793, 795 (Tex. 1941); see *In re Dorn*, 471 S.W.3d at 823; *In re Int'l Profit Assocs., Inc.*, 274 S.W.3d 672, 676 (Tex. 2009) (orig. proceeding).

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). Because mandamus review “depends heavily on the circumstances presented and is better guided by general principles than by simple rules,” mandamus may be appropriate to review an order granting a bill of review. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 137; see *In re Estrada*, 492 S.W.3d 42, 49 (Tex. App.—Corpus Christi 2016, orig. proceeding) (collecting cases).

The Court, having examined and fully considered the petition for writ of mandamus and the applicable law, is of the opinion that 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).

LETICIA HINOJOSA  
Justice

Delivered and filed the  
18th day of May, 2018.