



NUMBER 13-18-00651-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE MONICA GARCIA AND DAVID BENJAMIN ROBINSON

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Longoria and Hinojosa
Memorandum Opinion by Justice Longoria¹**

Relators Monica Garcia and David Benjamin Robinson, proceeding pro se, filed a petition for writ of mandamus in the above cause seeking to compel the Honorable Joe Benavides, Justice of the Peace for Precinct One, Place One to: (1) grant rehearing in the underlying eviction and unlawful detainer case; (2) “apply the law where it is required”;

¹ See TEX. R. APP. P. 52.8(d) (“When denying relief, the court may hand down an opinion but is not required to do so.”); *id.* R. 47.4 (distinguishing opinions and memorandum opinions).

and (3) vacate an order of eviction that was apparently rendered against relators on November 19, 2018.² We dismiss this original proceeding for lack of jurisdiction.

I. STANDARD OF REVIEW

To obtain relief by writ of mandamus, the relators must establish that an underlying order is void or a clear abuse of discretion and that no adequate appellate remedy exists. *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding); *Walker v. Packer*, 827 S.W.2d 833, 839–40 (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*, 494 S.W.3d at 712; *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 at 136.

It is the relators’ burden to properly request and show entitlement to mandamus relief. *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding) (“Even a pro se applicant for a writ of mandamus must show himself entitled to the extraordinary relief he seeks.”). In addition to other requirements, the relators must

² An action for forcible detainer is the judicial procedure for determining the right to immediate possession of real property. *It’s The Berrys, LLC v. Edom Corner, LLC*, 271 S.W.3d 765, 769 (Tex. App.—Amarillo 2008, no pet.); see TEX. R. CIV. P. 510.1. It exists to provide a speedy, simple and inexpensive means for settling the right to possession of premises. *It’s The Berrys*, 271 S.W.3d at 769. Jurisdiction over forcible detainer actions is expressly given to the justice court of the precinct where the property is located. See TEX. PROP. CODE ANN. § 24.004 (West, Westlaw through 2017 1st C.S.); TEX. R. CIV. P. 510.10(c); *Ward v. Malone*, 115 S.W.3d 267, 270 (Tex. App.—Corpus Christi 2003, pet. denied). The county court at law has jurisdiction over an appeal of the justice-court judgment in a forcible-detainer action. *Reynoso v. Dibs US, Inc.*, 541 S.W.3d 331, 337 (Tex. App.—Houston [14th Dist.] 2017, no pet.); see TEX. R. CIV. P. 510.9, 510.10.

include a statement of facts and “a clear and concise argument for the contentions made” with appropriate citations to authorities and to the appendix or record. See *generally* TEX. R. APP. P. 52.3. Relators have the burden of providing this Court with a record and appendix sufficient to support their claim for mandamus relief. *Walker*, 827 S.W.2d at 837; see TEX. R. APP. P. 52.3(k) (specifying the required contents for the appendix); *id.* R. 52.7(a) (specifying the required contents for the record).

II. JURISDICTION

Article V, Section 6 of the Texas Constitution delineates the appellate jurisdiction of the courts of appeals and further provides that the courts of appeals “shall have such other jurisdiction, original and appellate, as may be prescribed by law.” TEX. CONST. art. V, § 6. This Court’s original jurisdiction is governed by section 22.221 of the Texas Government Code. See TEX. GOV’T CODE ANN. § 22.221 (West, Westlaw through 2017 1st C.S.); see also *In re Cook*, 394 S.W.3d 668, 671 (Tex. App.—Tyler 2012, orig. proceeding). In pertinent part, this section provides that we may issue writs of mandamus and all other writs “necessary to enforce the jurisdiction of the court.” TEX. GOV’T CODE ANN. § 22.221(a). Section 22.221 also provides that we may issue writs of mandamus against “a judge of a district or county court,” or against a “judge of a district court who is acting as a magistrate at a court of inquiry,” or against “an associate judge of a district or county court appointed by a judge under Chapter 201, Family Code” in the court of appeals district. See *id.* § 22.221(b).

Relators’ petition seeks mandamus relief against a justice of the peace. This Court does not have jurisdiction to issue a writ of mandamus against a justice of the peace. See *id.*; *In re Meyer*, 482 S.W.3d 706, 709 (Tex. App.—Texarkana 2016, orig.

proceeding); *In re Smith*, 355 S.W.3d 901, 901 (Tex. App.—Amarillo 2011, orig. proceeding) (per curiam); *Easton v. Franks*, 842 S.W.2d 772, 773-74 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding) (per curiam). Further, relators have not demonstrated that the requested relief is necessary to enforce our jurisdiction. See *generally* TEX. GOV'T CODE ANN § 22.221(a); *In re Richardson*, 327 S.W.3d 848, 851 (Tex. App.—Fort Worth 2010, orig. proceeding).

III. CONCLUSION

The Court, having examined and fully considered the petition for writ of mandamus and the applicable law, is of the opinion that relators have not established this Court's jurisdiction over the relief sought. Accordingly, we dismiss the petition for writ of mandamus for lack of jurisdiction. See TEX. R. APP. P. 52.8(a), 52.10(b).

NORA L. LONGORIA
Justice

Delivered and filed the
28th day of November, 2018.