



NUMBER 13-18-00441-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

**IN RE JERRY J. TREVINO AND
THE LAW OFFICES OF JERRY J. TREVINO**

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Longoria and Hinojosa
Memorandum Opinion Per Curiam¹**

By petition for writ of mandamus, relators Jerry J. Trevino and the Law Offices of Jerry J. Trevino seek to compel the trial court to set aside various rulings pertaining to, inter alia, severance, the right to trial by jury, the disqualification of counsel, the denial of summary judgment, and the alignment of the parties.

A writ of mandamus will issue only if the trial court clearly abused its discretion and the relator has no adequate remedy on appeal. *In re Dawson*, 550 S.W.3d 625, 628 (Tex.

¹ See TEX. R. APP. P. 47.4 (distinguishing opinions and memorandum opinions); *id.* R. 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.”).

2018) (orig. proceeding) (per curiam); *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding); *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding). The relator bears the burden of proving both requirements. *In re H.E.B. Grocery Co.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam); *Walker*, 827 S.W.2d at 840.

A trial court abuses its discretion occurs when its 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 at 712; *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012). A trial court has no discretion in determining what the law is or applying the law to the facts, even when the law is unsettled. *In re Shipman*, 540 S.W.3d 562, 565–66 (Tex. 2018) (orig. proceeding) (per curiam); *In re State Farm Lloyds*, 520 S.W.3d 595, 604 (Tex. 2017) (orig. proceeding). However, appellate courts may not substitute their judgment for the trial court's determination of factual matters committed to the trial court's discretion. *In re Shipman*, 540 S.W.3d 562, 565–66 (Tex. 2018) (orig. proceeding) (per curiam); *Walker*, 827 S.W.2d at 839. Further, appellate courts are not authorized to resolve factual disputes in a mandamus proceeding. *In re Woodfill*, 470 S.W.3d 473, 478 (Tex. 2015) (orig. proceeding); *In re Angelini*, 186 S.W.3d 558, 560 (Tex. 2006) (orig. proceeding);

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, 135–36 (Tex. 2004) (orig. proceeding). In deciding whether the benefits of mandamus outweigh the detriments, we weigh the public and private interests involved, and we look to the facts in each case to determine the adequacy of an appeal. *In re United Servs. Auto.*

Ass'n, 307 S.W.3d 299, 313 (Tex. 2010) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 136–37. Mandamus is available only in situations involving “manifest and urgent necessity” and not for matters that may be addressed by other remedies. *City of Houston v. Houston Mun. Employees Pension Sys.*, 549 S.W.3d 566, 580 (Tex. 2018).

The Court, having examined and fully considered the petition for writ of mandamus, the response, and the reply, is of the opinion that relators have not met their burden to obtain relief under the applicable law. Accordingly, we lift the stay previously imposed in this cause and we deny the petition for writ of mandamus.

PER CURIAM

Delivered and filed the
10th day of April, 2019.