



NUMBER 13-19-00538-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE JUAN MANUEL ALBARADO

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Justices Benavides, Longoria, and Perkes
Memorandum Opinion by Justice Perkes¹**

Relator Juan Manuel Albarado, proceeding pro se, filed a petition for writ of mandamus in the above cause through which he seeks to have his claims “filed and adjudicated, and a full and fair hearing given in due course of law.” Relator asserts that he is a “Balli heir” and is attempting to have his family’s alleged title to Padre Island “restored.” Although the petition for writ of mandamus is unclear, it appears that relator contends that the district clerk, the trial court, unknown defendants, and prison officials

¹ 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.”); see also *id.* R. 47.4 (distinguishing opinions and memorandum opinions).

are refusing to file and adjudicate relator's claims to real property.² We deny the petition for writ of mandamus in part, as to relator's claims against the judge of the trial court, and dismiss the petition for writ of mandamus for lack of jurisdiction, in part, as to all remaining respondents.

I. STANDARD OF REVIEW

To obtain relief by writ of mandamus, a relator 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. 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)

² Relator has previously filed similar legal proceedings regarding the underlying real property claims. See *In re Albarado*, No. 13-18-00629-CV, 2018 WL 5993952, at *1 (Tex. App.—Corpus Christi Nov. 15, 2018, orig. proceeding) (mem. op.); *Albarado v. "Trespassers Ab Initio,"* No. B: 18-CV-123, 2018 WL 4266141, at *1 (S.D. Tex. Aug. 13, 2018), *report and recommendation adopted sub nom. Albarado v. Trespassers Ab Initio*, No. 1:18-CV-123, 2018 WL 4257903 (S.D. Tex. Sept. 6, 2018).

(orig. proceeding); *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 469 (Tex. 2008) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 136–37.

It is the relator’s 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 relator must include a statement of facts supported by citations to “competent evidence included in the appendix or record,” and must also provide “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. The relator must furnish an appendix or record sufficient to support the claim for mandamus relief. See *id.* R. 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 states that the courts of appeals “shall have such other jurisdiction, original and appellate, as may be prescribed by law.” TEX. CONST. art. V, § 6(a); see *In re Bayview Loan Servicing, LLC*, 532 S.W.3d 510, 511 (Tex. App.—Texarkana 2017, orig. proceeding). This Court’s original jurisdiction is governed by section 22.221 of the Texas Government Code. See TEX. GOV’T CODE ANN. § 22.221; 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.” *Id.* § 22.221(a). This section also

provides that we may issue writs of mandamus against: (1) a judge of a district, statutory county, statutory probate county, or county court in the court of appeals district; (2) a judge of a district court who is acting as a magistrate at a court of inquiry under Chapter 52, Code of Criminal Procedure, in the court of appeals district; or (3) an associate judge of a district or county court appointed by a judge under Chapter 201, Family Code, in the court of appeals district for the judge who appointed the associate judge. *Id.* § 22.221(b).

III. ANALYSIS

Relator's petition for writ of mandamus seeks relief against the trial court, the district clerk, unknown defendants, and prison officials. To the extent that relator requests that we issue a writ of mandamus against the judge of the trial court, relator has failed to meet his burden to show entitlement to relief. See *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d at 712; *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 135–36. Relator has failed to file an appendix or record in compliance with the appellate rules which supports his claim for relief. Accordingly, we deny the petition for writ of mandamus against the judge of the trial court. To the extent that relator seeks relief against the district clerk, unknown defendants, and prison officials, we do not have mandamus jurisdiction against these individuals unless necessary to enforce our jurisdiction, and relator has not demonstrated that the requested relief is necessary for this purpose. See generally *id.* § 22.221; *In re Smith*, 263 S.W.3d 93, 95 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding) (“This court does not have jurisdiction to issue a writ of mandamus against a district clerk unless such is necessary to enforce our jurisdiction.”); *Martinez v. Thaler*, 931 S.W.2d 45, 46 (Tex. App.—Houston [14th Dist.] 1996, writ denied) (“A district court has no constitutional

or statutory jurisdiction to exercise supervisory control over prison officials.”). We dismiss the petition for writ of mandamus against these individuals for lack of jurisdiction.

III. CONCLUSION

The Court, having examined and fully considered the petition for writ of mandamus and the applicable law, is of the opinion that relator has neither established his right to mandamus relief against the trial court nor established this Court’s mandamus jurisdiction over the remaining individuals. Accordingly, we deny the petition for writ of mandamus in part and dismiss it in part for lack of jurisdiction as stated herein.

GREGORY T. PERKES
Justice

Delivered and filed the
23rd day of October, 2019.