



NUMBER 13-22-00236-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN RE KIRBY OFFSHORE MARINE OPERATING, LLC

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Benavides and Tijerina
Memorandum Opinion by Chief Justice Contreras¹**

On May 24, 2022, relator Kirby Offshore Marine Operating, LLC filed a petition for writ of mandamus asserting that the trial court abused its discretion by ordering a new trial without stating specific reasons for the new trial, and relator lacks an adequate remedy by appeal to address this abuse of discretion. *See In re Bent*, 487 S.W.3d 170, 172–73 (Tex. 2016) (orig. proceeding); *In re United Scaffolding, Inc.*, 377 S.W.3d 685,

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. When granting relief, the court must hand down an opinion as in any other case.”); *id.* R. 47.4 (distinguishing opinions and memorandum opinions).

688–89 (Tex. 2012) (orig. proceeding); *In re Columbia Med. Ctr. of Las Colinas, Subsidiary, L.P.*, 290 S.W.3d 204, 213 (Tex. 2009) (orig. proceeding).

Mandamus is an extraordinary and discretionary remedy. See *In re Allstate Indem. Co.*, 622 S.W.3d 870, 883 (Tex. 2021) (orig. proceeding); *In re Garza*, 544 S.W.3d 836, 840 (Tex. 2018) (orig. proceeding) (per curiam); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 138 (Tex. 2004) (orig. proceeding). The relator must show that (1) the trial court abused its discretion, and (2) the relator lacks an adequate remedy on appeal. *In re USAA Gen. Indem. Co.*, 624 S.W.3d 782, 787 (Tex. 2021) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 135–36; *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding).

The Court, having examined and fully considered the petition for writ of mandamus and the response filed by the real party in interest, Southern Recycling, LLC, is of the opinion that the relator has not met its burden to obtain relief in this original proceeding. Accordingly, we deny the petition for writ of mandamus. Our ruling here is without prejudice to other original proceedings on this issue, if any, that might be filed in the future.

DORI CONTRERAS
Chief Justice

Delivered and filed on the
7th day of June, 2022.