

Filing for Mandamus in Child Welfare Proceedings

JUSTICE JULIE COUNTISS,

FIRST COURT OF APPEALS

BILL CONNOLLY,

CONNOLLY, SCHNEIDER, AND SHIREMAN

MAY 7, 2024





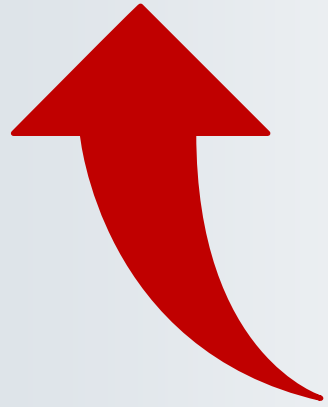
Appealing a Temporary Order

Temporary Orders That Can Be Appealed

Generally, temporary orders are not subject to interlocutory appeal per [Tex. Fam. Code § 105.001\(e\)](#), but there are some exceptions:

- DFPS may appeal where a court refuses to permit removal of a child despite DFPS' determination that the child is in "immediate danger." [Tex. Fam. Code § 262.112\(b\)](#).
- Relatives or designated caregivers denied placement of a child due to a conviction of a low-risk offense may appeal the disqualification. [Tex. Fam. Code § 264.754\(c\)](#).
- Protective orders may be appealed in some circumstances. [Tex. Fam. Code § 81.009](#).
- Interlocutory relief by petition for writ of mandamus may be available in some circumstances.





Mandamus

Mandamus

In some circumstances, a party may seek appellate relief through a petition for writ of mandamus. Relief by mandamus “is proper only to correct a clear abuse of discretion when there is no adequate remedy by appeal.” *In re Tex. Dep’t of Family & Protective Servs.*, 210 S.W.3d 609, 612 (Tex. 2006) (orig. proceeding).

Mandamus may be appropriate to challenge a trial court’s legal errors, its factual findings, or its application of the law to the facts. “If the trial court fails to properly interpret the law or applies the law incorrectly, it abuses its discretion.” *In re Dep’t of Family & Protective Servs.*, 273 S.W.3d 637, 642-43 (Tex. 2009) (orig. proceeding).



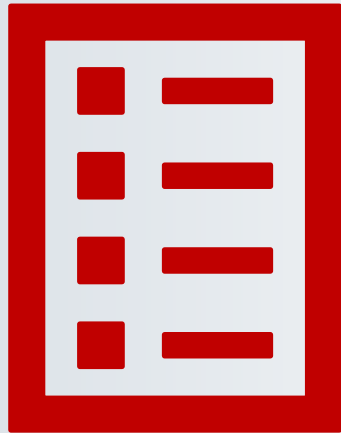


Standard of Review

Abuse of Discretion

“A trial court abuses its discretion when it makes a decision that is so arbitrary and unreasonable as to amount to a clear and prejudicial error of law.” *In re Berryman*, 629 S.W.3d 453, 458 (Tex. App.—Tyler 2020, orig. proceeding). The appellate court will not substitute its judgment for the trial court’s judgment, but it must ensure that the trial court did not “act[] without reference to guiding rules and principles.” *Id.* “[A]n appellate court should defer to the trial court’s factual determinations supported by the record.” *In re C.J.C.*, 603 S.W.3d 804, 811 (Tex. 2020) (orig. proceeding).





Statutory Authorizations for Mandamus

Statutory Authorizations

The Texas Family Code sets forth three specific instances where mandamus is permitted in child welfare cases:

1. In a SAPCR, a “court may make any order necessary to preserve and protect the safety and welfare of the child during the pendency of an appeal as the court may deem necessary and equitable.” [Tex. Fam. Code § 109.001\(a\)](#). These orders may be challenged by mandamus or assignment as error in a party’s brief, [Tex. Fam. Code § 109.001\(b-5\)](#), but not by interlocutory appeal, [Tex. Fam. Code § 109.001\(c\)](#).



Statutory Authorizations

2. If a court fails to set the final hearing for a date that permits the court to render a final order before the statutory dismissal date, any party or the child's attorney ad litem "may seek a writ of mandamus to compel the court" to do so. [Tex. Fam. Code § 263.304\(b\)](#).
3. Once a suit timely commences under [Tex. Fam. Code § 263.401](#), a court shall render a final order within ninety days unless timely extended. [Tex. Fam. Code § 263.4011\(a\) and \(c\)](#). "A party may file a mandamus proceeding if the court fails to render a final order within the time required" by [Tex. Fam. Code § 263.4011](#). [Tex. Fam. Code § 263.4011\(d\)](#).

Case Law Precedents for Mandamus



The Adversary Hearing

- A trial court's decision to allow DFPS to maintain custody of a child following an adversary hearing is reviewable, if at all, through a Petition for Writ of Mandamus.
- [In re Steed](#), 03-08-00235-CV, 2008 WL 2132014 (Tex. App. - Austin May 22, 2008, (orig. proceeding)(No. 03-08-00235-CV), mandamus granted, [In re DFPS](#), 255 S.W. 3rd 613, 614 (Tex.2008), mandamus denied; [In the Interest of J.D.S.](#), 2015 WL 6437722 (Tex. App.-Waco)(10/22/15); [In re Tomica Henderson](#), (No. 14-12-01074-CV) (Tex. App.-Houston [14th Dist])(January 15, 2013)(orig. proceeding). [In re Jessica Pate](#), 407 S.W.3rd 416 (Tex. App.-Houston [14th Dist.] 2013, no pet.)(orig. proceeding); [In re Cochran](#), 151 S.W.3d 275 (Tex. App.—Texarkana 2004, no pet.) (Original Proceeding); [In re Allen](#), 359 S.W.3rd 284, 288 (Tex. App. – Texarkana 2012) (orig. proceeding)

The Adversary Hearing

- Failure of trial court to timely hold adversary hearing subject to review by mandamus. *In re E.D.L.*, 105 S.W.3d 679, 688 (Tex. App.—Fort Worth 2003, pet. denied). Remedy for failing to hold timely status hearing, initial permanency hearing, or subsequent permanency hearing was mandamus rather than due process complaint on appeal. *In re T.T.F.*, 331 S.W.3d 461, 479-80 (Tex. App.—Fort Worth 2010, no pet.).

Other Mandamus Circumstances

- Mandamus is proper to compel trial court to dismiss suit for failing to comply with statutory dismissal deadline. *In re G.P.*, 665 S.W.3d 127, 134 (Tex. App.—Texarkana 2023, orig. proceeding).
- Mandamus compelling trial court to not hold termination trial on holy days. *In re Blank*, No. 01-13-00792-CV, 2013 WL 5276108 at *1 (Tex. App.—Houston [1st Dist.] Sep. 18, 2013, orig. proceeding).
- Mandamus proper to challenge order in aid of investigation. *In re Berryman*, 629 S.W.3d 453, 457 (Tex. App.—Tyler 2020, orig. proceeding).



Right to
Mandamus is not
Absolute

Judicial Discretion

An appellate court may deny relief “when a party inexplicably delays asserting its rights.” *In re Roxsane R.*, 249 S.W.3d 764, 771 (Tex. App.—Fort Worth 2008, orig. proceeding). Furthermore, unchallenged temporary orders are mooted upon rendition of a final judgment. *In re E.R.W.*, 528 S.W.3d 251, 257 (Tex. App.—Houston [14th Dist.] 2017, no pet.). By the time you reach the final hearing and final judgment, the Temporary Orders have been superseded and complaints relative to the removal have become moot. *In the Interest of E.C.R.*, 402 S.W.3rd 239, 244 (Tex.2014).





Process of Mandamus

Process

Tex. R. App. P. 52 prescribes the procedural requirements for petitions for writs of mandamus and other original proceedings in the appellate courts.

Tex. R. App. P. 52.3. Form and Contents of Petition

Tex. R. App. P. 52.7. Record

Tex. R. App. P. 52.10. Temporary Relief

