

COURT OF APPEALS FOR THE SECOND APPELLATE DISTRICT OF TEXAS
AT FORT WORTH

In re M.S.

No. 02-26-00016-CV · No. 02-26-00016-CV · Decided January 20, 2026

SUMMARY

The Texas Court of Appeals for the Second District denied the mother's petition for a writ of mandamus seeking to vacate a temporary orders ruling and obtain sole managing conservatorship of her child. The court held that she failed to exercise diligence because she waited approximately eight months after the written order, and fourteen months after the oral ruling, to seek mandamus relief. The court also noted that she had not sought to set her underlying modification petition for a final hearing.

CASE DETAILS

COURT	Court of Appeals for the Second Appellate District of Texas at Fort Worth
WRITING FOR THE COURT	Walker; Kerr; Womack
JURISDICTION	Court of Appeals for the Second Appellate District of Texas at Fort Worth
DECIDED	January 20, 2026
DOCKET	02-26-00016-CV
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original mandamus proceeding in which Mother sought to compel the trial court to vacate a temporary-orders ruling and issue temporary orders appointing her as the child's sole managing conservator and removing the Nonparent's conservatorship rights.
STANDARD OF REVIEW	Whether delay precludes mandamus relief is a fact-specific inquiry; undue or unreasonable delay may waive the right to mandamus relief unless justified.
PRECEDENTIAL VALUE	Published memorandum opinion; the opinion itself states that the petition for writ of mandamus is denied.
PARTIES	M.S., Relator (Mother) v. The State of Texas, Real Party in Interest Nonparent

TOPICS

family law procedure

appellate procedure

child custody

parental rights

writ of certiorari

PRACTICE AREAS

family law

appellate procedure

mandamus

QUESTIONS PRESENTED

1. Whether Mother was entitled to mandamus relief compelling the trial court to vacate its May 2025 temporary-orders order.
2. Whether Mother's delay in seeking mandamus relief was unreasonable and therefore barred relief under the equitable diligence requirement.

HOLDINGS

1. A relator's undue or unreasonable delay in asserting a right may waive entitlement to mandamus relief unless the delay is justified, because equitable principles governing mandamus require diligence.
2. Mother was not entitled to mandamus relief because she failed to exercise diligence in challenging the trial court's ruling.

KEY QUOTATIONS

"Thus, undue or unreasonable delays may waive a relator's right to relief unless the delay is justified." (at 2)

"We deny Mother's petition for writ of mandamus." (at 4)

FACTUAL BACKGROUND

Mother sought to be appointed the child's sole managing conservator and to terminate the Nonparent's status as joint managing conservator. The associate judge and, after a de novo hearing, the trial court denied that requested temporary relief. Although the trial court orally ruled in November 2024, Mother waited until January 2026 to seek mandamus, approximately eight months after the written order and fourteen months after the oral ruling.

PROCEDURAL HISTORY

Mother filed a petition to modify the parent-child relationship in June 2024. An associate judge denied her requested temporary relief in July 2024, and the trial court denied the same relief after a de novo hearing in November 2024. The trial court signed a written order in May 2025. Mother filed a motion to reconsider in September 2025 and then sought mandamus relief in January 2026. The court of appeals denied the petition because of her lack of diligence.

DISPOSITION

writ_denied

CASES CITED

- In re C.B., No. 02-25-00026-CV, 2025 WL 728233, at *2-3 (Tex. App.—Fort Worth Mar. 6, 2025, orig. proceeding [mand. denied]) (mem. op.)
- In re Bledsoe, 41 S.W.3d 807, 811 (Tex. App.—Fort Worth 2001, orig. proceeding)

OPINION

In Re M.S. v. the State of Texas

PER CURIAM.

In the Court of Appeals Second Appellate District of Texas at Fort Worth
_____ No. 02-26-00016-CV _____ IN RE
M.S., Relator Original Proceeding 231st District Court of Tarrant County, Texas Trial Court No.
231-687524-20 Before Walker, Kerr, and Womack, JJ. Per Curiam Memorandum Opinion
MEMORANDUM OPINION

Relator Mother seeks a writ of mandamus to compel the trial court to (1) vacate its May 2025 order and (2) issue temporary orders appointing her as her child’s sole managing conservator and removing any conservatorship rights of the Real Party in Interest Nonparent.¹ Because Mother has not used diligence, we deny her petition for writ of mandamus.

I. LEGAL PRINCIPLES

Although mandamus is a legal remedy, equitable principles largely control it. In re C.B., No. 02-25-00026-CV, 2025 WL 728233, at *2–3 (Tex. App.—Fort Worth Mar. 6, 2025, orig. proceeding [mand. denied]) (mem. op.). One such principle is that equity aids the diligent and not those who slumber on their rights. *Id.* Thus, undue or unreasonable delays may waive a relator’s right to relief unless the delay is justified. *Id.* Whether a relator’s delay in asserting its rights precludes mandamus relief is a fact- specific inquiry. *Id.*

II. APPLICATION

In June 2024, Mother filed a petition to modify the parent–child relationship seeking to have herself appointed as her child’s sole managing conservator and to terminate Nonparent’s status as the child’s joint managing conservator. In July 2024, To protect the child’s identity, we refer to the parties by their relationship to 1 him. See Tex. Fam. Code Ann. § 109.002(d); Tex. R. App. P. 9.8(b)(2). 2 in an “Associate Judge’s Report,” the associate judge denied—as temporary orders—Mother the relief that she sought. Mother requested a de novo hearing, which the trial court conducted in November 2024, and the trial court, like the associate judge, refused to grant Mother her requested relief. Because this ruling was on the record, Mother could have sought mandamus relief at this point. See Tex. Fam. Code. Ann. § 101.026 (stating that a judge renders a decision when ruling “orally in the presence of the court reporter”); In re Bledsoe, 41 S.W.3d 807, 811 (Tex. App.—Fort Worth 2001, orig. proceeding) (stating that courts may consider oral orders if they are clear, specific, enforceable, and adequately shown by the record). But the trial court did not sign a written order reflecting that ruling until May 2025—about six months later. This May

2025 order is the order from which Mother seeks relief. Thus, Mother waited until January 2026—approximately eight months after the order was signed and about fourteen months after the trial court made an oral ruling on the record—to file her petition for writ of mandamus. Mother was not totally idle during all those months. In September 2025, she filed in the trial court a motion to reconsider.² The trial court purportedly heard this motion in December 2025 and denied it, but Mother has provided neither a reporter’s ² Various statutes supporting Mother’s position became effective September 1, 2025. See Act of May 15, 2025, 89th Leg., R.S., ch.236, §§ 1, 2, 3, 4, 5, sec. 102.0031, 2025 Tex. Sess. Law Serv. —, — (to be codified as Tex. Fam. Code §§ 102.0031, 153.002, 153.008). Mother relied on Sections 153.002 and 153.008 in her September 2025 motion to reconsider. ³ record of the hearing nor a written, signed order. Regardless, the order from which Mother seeks relief is the May 2025 order. We further note that despite Mother’s dissatisfaction with the temporary orders, our record does not show that she has sought to have her petition to modify set for a final hearing. Thus, Mother’s petition to modify has been pending for a year and a half. Cf. Tex. Fam. Code Ann. § 263.401(a), (b) (requiring termination proceedings to be tried within one year with a possible 180-day extension for “extraordinary circumstances”).

III. CONCLUSION

We deny Mother’s petition for writ of mandamus. See C.B., 2025 WL 728233, at *2–3. Per Curiam Delivered: January 20, 2026 ⁴