

Deny and Opinion Filed February 18, 2015



In The  
**Court of Appeals**  
**Fifth District of Texas at Dallas**

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No. 05-15-00179-CV

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**IN RE KENNETH FOSTER, Relator**

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**Original Proceeding from the 256th Judicial District Court**  
**Dallas County, Texas**  
**Trial Court Cause No. DF-07-17971-Z**

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MEMORANDUM OPINION

Before Justices Lang-Miers, Evans, and Whitehill  
Opinion by Justice Whitehill

This petition for writ of mandamus arises from a family court proceeding seeking enforcement of the child support and spousal support provisions of a divorce decree and order modifying the support provisions of the divorce decree. Following a bench trial, the trial court initially ordered the motion for enforcement dismissed with prejudice, but subsequently granted new trial without stating its reasons for granting new trial. Relator requests that the Court order the trial court to vacate its order granting new trial and render judgment on its prior order of dismissal. Alternatively, relator requests that the Court order the trial court to state its reasons for granting new trial. We decline relator's invitation to extend mandamus review to proceedings such as this one. *See In re Toyota Motor Sales, U.S.A., Inc.*, 407 S.W.3d 746, 762–63 (Tex. 2013) (orig. proceeding) (Lehrmann, J. concurring) (noting concerns regarding transparency in setting aside jury verdict are not present with regard to orders issued after bench trials); *In re Cort*, No. 14-14-00646-CV, 2014 WL 4416074, at \*2 (Tex. App.—Houston [14th

Dist.] Sept. 9, 2014, orig. proceeding) (mem. op.) (declining to extend mandamus review to order granting new trial following post-answer default judgment); *In re Old Am. Cnty. Mut. Fire Ins. Co.*, No. 13–13–00644–CV, 2014 WL 1633098, \* 11 (Tex. App.–Corpus Christi Apr. 23, 2014, orig. proceeding) (mem. op.) (declining to extend mandamus review to include merits-based review of orders granting new trial in non-jury cases).

Ordinarily, to obtain mandamus relief, a relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). Based on the record before us, we conclude relator has failed to establish a right to relief. We **DENY** the petition.

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/Bill Whitehill/  
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BILL WHITEHILL  
JUSTICE