

Denied and Opinion Filed July 3, 2025



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

No. 05-25-00321-CV

**IN RE JOSHUA S. BROOKS, INDIVIDUALLY, AND AS ASSIGNEE OF
INFINITY CONCISE MANUFACTURING LLC; DARK HORSE CAPITAL
LLC; DARK HORSE DISTRIBUTION LLC; DARK HORSE CAPITAL
HOLDINGS LLC; H AND A VENTURES INCORPORATED;
AND JSK DISTRIBUTION LLC, Relators**

**Original Proceeding from the 101st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-23-21494**

MEMORANDUM OPINION

Before Justices Garcia, Clinton, and Rossini
Opinion by Justice Garcia

In this original proceeding, relators ask the Court to compel the trial court to vacate its January 8, 2025 Order Awarding Christopher K. McClure's Attorneys' Fees (the Fee Award).

Entitlement to mandamus relief requires relators to show that the trial court clearly abused its discretion and that relators lack an adequate appellate remedy. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). “The extraordinary nature of the mandamus remedy and the requirement that a party seeking mandamus relief exercise diligence both mandate

that arguments not presented to the trial court cannot first be considered in an original proceeding seeking mandamus.” *In re Floyd*, No. 05-16-00491-CV, 2016 WL 2353874, at *1 (Tex. App.—Dallas May 3, 2016, orig. proceeding) (mem. op.) (citing *In re Am. Optical Corp.*, 988 S.W.2d 711, 714 (Tex. 1998) (orig. proceeding) (per curiam)). This means that a relator may not raise challenges for the first time in a mandamus petition. See *In re Eagleridge Operating, LLC*, 642 S.W.3d 518, 525 (Tex. 2022) (orig. proceeding) (“Mandamus will not issue unless the respondent judge clearly abused her discretion, and she could not have done so as to unpleaded and unpresented issues.”); *In re Rowes*, No. 05-14-00606-CV, 2014 WL 2452723, at *1 (Tex. App.—Dallas May 30, 2014, orig. proceeding) (mem. op.) (“A court cannot grant mandamus relief unless the error was raised in the trial court,” and “[a] party seeking mandamus must direct the Court to where the argument was presented to the trial court.”). Additionally, “the right to mandamus relief generally requires a predicate request for action by the respondent, and the respondent’s erroneous refusal to act.” *In re Coppola*, 535 S.W.3d 506, 510 (Tex. 2017) (orig. proceeding) (per curiam).

Relators assert a number of arguments to challenge the Fee Order, including various contentions about what type of notice the trial court should have provided them before issuing the Fee Order. After reviewing the petition and record before

us, we conclude relators did not raise their arguments in the trial court before seeking mandamus relief.

Additionally and alternatively, to the extent relators did raise an argument in the trial court, we conclude relators failed to demonstrate the trial court clearly abused its discretion by rejecting that argument based on the record before us. Further, to the extent the record shows that relators did request certain notice and an opportunity to respond to real party in interest's fee application, we conclude that the record before us does not show that relators brought their request to the trial court's attention and/or that the trial court refused that request. We further conclude that the record before us does not show that this is one of the rare occasions where the predicate-request requirement may be relaxed. *See In re Perritt*, 992 S.W.2d 444, 446 (Tex. 1999) (orig. proceeding) (per curiam) ("On rare occasions we have relaxed this predicate when the circumstances confirmed that the request would have been futile and the refusal little more than a formality.") (internal quotation marks omitted).

Accordingly, for each of the above independent and alternative reasons, we conclude relators have failed to demonstrate entitlement to mandamus relief and deny the petition.

We further lift the stay issued by the Court's March 26, 2025 order.

/Dennise Garcia/

DENNISE GARCIA
JUSTICE