



NUMBER 13-20-00233-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

**IN RE VIVIAN GARCIA, AS INDEPENDENT EXECUTRIX OF THE
ESTATE OF JESUS RODRIGUEZ AGUERO, M.D., DECEASED**

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

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

By petition for writ of mandamus, relator Vivian Garcia, as independent executrix of the estate of Jesus Rodriguez Aguero, M.D., deceased, contends that “the probate court acted without jurisdiction and abused its discretion when it ordered an accounting under section 404.001(b) of the Texas Estates Code on the motion of litigants who lack

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

statutory standing to obtain this relief,” and therefore, “mandamus relief is warranted.” See TEX. ESTATES CODE ANN. § 404.001.

Mandamus is both an extraordinary remedy and a discretionary one. *In re Garza*, 544 S.W.3d 836, 840 (Tex. 2018) (orig. proceeding) (per curiam). For mandamus to issue, the relator must show that the trial court abused its discretion and that no adequate appellate remedy exists to cure the error. *In re N. Cypress Med. Ctr. Operating Co.*, 559 S.W.3d 128, 130 (Tex. 2018) (orig. proceeding); *In re Christus Santa Rosa Health Sys.*, 492 S.W.3d 276, 279 (Tex. 2016) (orig. proceeding). The relator bears the burden of proving both requirements. *In re H.E.B. Grocery Co.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam); *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding).

An abuse of discretion occurs when a trial court’s ruling is arbitrary and unreasonable or is made without regard for guiding legal principles or supporting evidence. *In re Garza*, 544 S.W.3d at 840; *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding). We determine the adequacy of an appellate remedy by balancing the benefits of mandamus review against the detriments. *In re H.E.B. Grocery Co.*, 492 S.W.3d at 304; *In re Essex Ins. Co.*, 450 S.W.3d 524, 528 (Tex. 2014) (orig. proceeding) (per curiam); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004) (orig. proceeding). In this regard, an order on a request for accounting is not final and appealable. See *Pollard v. Pollard*, 316 S.W.3d 238, 241 (Tex. App.—Dallas 2010, no pet.); see also *In re Jones*, No. 12-19-00354-CV, 2019 WL 7373848, at *8 (Tex. App.—Tyler Dec. 31, 2019, orig. proceeding) (mem. op.); *Estate of Easley*, No. 07-15-00378-CV, 2017 WL 764603, at *2 (Tex. App.—Amarillo Feb. 24, 2017, no pet.) (mem.

op.). Accordingly, there is no adequate remedy by appeal and mandamus review of an order on a request for an accounting may be appropriate. See *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 135–36; see also *In re Jones*, 2019 WL 7873848, at *8.

The Court, having examined and fully considered the petition for writ of mandamus, the response filed by real parties in interest Charlotte Philbrick and Bruce Philbrick, and the applicable law, is of the opinion that the relator has not met her burden to obtain relief. Accordingly, we deny the petition for writ of mandamus.

DORI CONTRERAS
Chief Justice

Delivered and filed the
15th day of July, 2020.