

DENY and Opinion Filed July 29, 2020



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

No. 05-19-01296-CV

IN RE SAMUEL THELLER, Relator

**Original Proceeding from the 95th District Court
Dallas County, Texas
Trial Court Cause No. DC-19-05637**

MEMORANDUM OPINION

**Before Chief Justice Burns, and Justices Osborne and Carlyle
Opinion by Justice Osborne**

Before the Court is relator's petition for writ of mandamus regarding an order granting a new trial, following a no-answer default judgment (the Order). On December 11, 2019, we abated this proceeding to allow a successor judge to consider the Order, following elevation to the Court of Appeals of the trial judge who signed the Order. The parties recently provided us with an order signed by the judge now assigned to the 95th District Court until December 30, 2020, reconsidering the Order, and also granting real party's motion for new trial.

We **REINSTATE** this case. Entitlement to mandamus relief requires relator to show both that the trial court has clearly abused its discretion and that he has no

adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). After reviewing the petition and the limited mandamus record provided to us, we conclude relator has not shown he is entitled to the relief requested.

Accordingly, we deny relator’s petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

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/Leslie Osborne/
LESLIE OSBORNE
JUSTICE