

Serial: 202733

IN THE SUPREME COURT OF MISSISSIPPI

No. 2015-M-01345

IN RE: PATRICIA REDMAN

Petitioner

ORDER

Now before the en banc Court is the Petition for Writ of Mandamus filed by Patricia Redman seeking an order funding expert costs. Responses filed by Circuit Judge Gerald W. Chatham Sr., the Attorney General's Office, and the Office of the District Attorney for the 17th Judicial District are also before us. A surrebuttal filed by Redman is before as well; but because Redman failed to seek leave to file a surrebuttal, we do not consider it.

After due consideration, we find that this matter should be dismissed without prejudice to Redman's right to file a petition in the trial court seeking reconsideration of its previous order awarding expert fees.

IT IS THEREFORE ORDERED that this matter is dismissed without prejudice to Redman's right to file a petition in the trial court seeking reconsideration of its previous order awarding expert fees.

SO ORDERED, this the 24th day of May, 2016.

/s/ Jess H. Dickinson

JESS H. DICKINSON,
PRESIDING JUSTICE
FOR THE COURT

TO AGREE: WALLER, C.J., DICKINSON, P.J., LAMAR, KITCHENS, KING AND COLEMAN, JJ.

RANDOLPH, P.J., OBJECTS WITH SEPARATE WRITTEN STATEMENT JOINED BY MAXWELL AND BEAM, JJ; COLEMAN, J., JOINS IN PART.

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NO. 2015-M-01345

IN RE: PATRICIA REDMAN

RANDOLPH, PRESIDING JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE WRITTEN STATEMENT:

¶1. Redman filed a petition asking this Court to order a trial judge to enter judgment against DeSoto County in the amount of \$63,125, payable to the petitioner.¹

¶2. A Petition for Writ of Mandamus is wholly improper. The purpose of a mandamus is to compel action, not control discretion. The decision regarding the amount of money to be paid for expert witness fees is within the discretion of the trial court. It is not a *ministerial* act. No circuit court is under a legal duty to provide a defendant all the money he or she seeks for expert witnesses. The government is not obligated “to duplicate the legal arsenal that may be privately retained . . . but only to assure the indigent defendant an adequate opportunity to present his claims fairly. . . .” *Ross v. Moffitt*, 417 U.S. 600, 616, 94 S. Ct. 2437, 2447, 41 L. Ed. 2d 341 (1974).

¶3. The narrow function of mandamus is to compel trial judges to perform *nondiscretionary* acts that they are required by law to perform. *In re Chisolm*, 837 So. 2d 183, 189 (Miss. 2003) (citations omitted). It is an extraordinary writ that should issue *only*

¹ The \$63,125 includes \$31,000, previously paid to expert witnesses by petitioner’s parents.

when no “plain, adequate and speedy legal or administrative remedy” exists. *Id.* (citation omitted).²

¶4. As succinctly stated by the trial court in its response to Redman’s petition:

Simply put, [the trial court] considered and ruled upon the Petitioner’s motion in a timely manner. The Petitioner, being unsatisfied with the [trial court’s] decision, has improperly utilized the procedure for mandamus to express this dissatisfaction, where an **appeal** of the [trial court’s] decision would be the proper channel for relief. For this reason alone, the *Petition for Writ of Mandamus* should be denied, as [the trial court] is under no affirmative duty to act.

See Judge Gerald W. Chatham Sr.’s Response to Petition for Writ of Mandamus, at ¶ 5 (emphasis original).

¶5. Furthermore, I dissent to the order’s use of the word “right” in paragraphs 2 and 3, without explaining from where that right arises. Not only does the order arguably grant a nonexistent right, it is in the nature of an advisory opinion. Our cases are legion for the principle that “the Mississippi Supreme Court has ‘no power to issue advisory opinions.’” *A&F Props., LLC v. Madison Cty. Bd. of Supervisors*, 933 So. 2d 296, 302 (Miss. 2006) (quoting *Allred v. Webb*, 641 So. 2d 1218, 1220 (Miss. 1994)). See also *Hughes v. Hosemann*, 68 So. 3d 1260, 1263 (Miss. 2011) (“As a matter of judicial policy, this Court

² Four essential elements must coexist before a writ of mandamus will issue:

- (1) the petitioner must be authorized to bring the suit,
- (2) there must be a clear right in petitioner to the relief sought,
- (3) there must exist a legal duty on the part of the defendant to do the thing which the petitioner seeks to compel, and
- (4) there must be no other adequate remedy at law.

Bennett v. Bd. of Supervisors of Pearl River Cty., 987 So. 2d 984, 986 (Miss. 2008) (citation omitted).

does not issue advisory opinions.”); *Nelson v. State*, 72 So. 3d 1038, 1045 (Miss. 2011); *Insured Savs. & Loan Ass’n v. State*, 135 So. 2d 703, 706 (Miss. 1961) (“The Supreme Court has no power to render advisory opinions.”).

¶6. Respectfully, I would deny Redman’s petition for the reasons stated herein.

MAXWELL AND BEAM, JJ., JOIN THIS SEPARATE WRITTEN STATEMENT. COLEMAN, J., JOINS THIS SEPARATE WRITTEN STATEMENT IN PART.