



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

IN RE: BENJAMIN J. GUTIERREZ,	§	No. 08-14-00061-CV
RELATOR.	§	ORIGINAL PROCEEDING
	§	ON PETITION FOR WRIT OF
	§	MANDAMUS
	§	

MEMORANDUM OPINION

Relator, Benjamin Gutierrez, has filed a *pro se* petition for writ of mandamus against the Honorable Yahara Gutierrez, Judge of the 65th District Court of El Paso County, Texas. He asks that we order Respondent to set aside temporary orders entered in connection with a petition to modify custody filed by the Real Party in Interest, Araceli Jimenez. We have also construed his mandamus petition as requesting that we order Respondent to rule on his motion to set aside the temporary orders. The petition for writ of mandamus is denied.

To be entitled to mandamus relief, a relator must meet two requirements. First, the relator must show that the trial court clearly abused its discretion. *In re Prudential Insurance Company of America*, 148 S.W.3d 124, 135-36 (Tex. 2004). Second, the relator must demonstrate that there is no adequate remedy by appeal. *Id.* at 136.

Mandamus may issue to compel a trial court to rule on a motion which has been pending before the court for a reasonable period of time. *See In re Shredder Co.*, 225 S.W.3d 676, 679 (Tex.App.--El Paso 2006, orig. proceeding); *In re Hearn*, 137 S.W.3d 681, 685 (Tex.App.--San

Antonio 2004, orig. proceeding); *In re Chavez*, 62 S.W.3d 225, 228 (Tex.App.--Amarillo 2001, orig. proceeding). To obtain mandamus relief for such refusal, a relator must establish: (1) the motion was properly filed and has been pending for a reasonable time; (2) the relator requested a ruling on the motion; and (3) the trial court refused to rule. *See Shredder Co.*, 225 S.W.3d at 679; *Hearn*, 137 S.W.3d at 685; *Chavez*, 62 S.W.3d at 228. The mere filing of a motion with a trial court clerk does not equate to a request that the trial court rule on the motion. *See Hearn*, 137 S.W.3d at 685; *Chavez*, 62 S.W.3d at 228. The record before us does not establish that Relator has requested a ruling on his motion to set aside the temporary orders or that Respondent has refused to rule on the motion. Consequently, he is not entitled to mandamus relief on this ground.

Relator presents other arguments to support his request that we order Respondent to aside the temporary orders. Based on the record before us, we conclude that Relator has not established he is entitled to mandamus relief. Accordingly, we deny the petition for writ of mandamus. *See* TEX.R.APP.P. 52.8(a).

February 19, 2014

YVONNE T. RODRIGUEZ, Justice

Before McClure, C.J., Rivera, and Rodriguez, JJ.