

Petition for Writ of Mandamus Denied and Memorandum Opinion filed September 9, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-00820-CV

IN RE RALPH O. DOUGLAS, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS

MEMORANDUM OPINION

On August 24, 2010, relator filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. § 22.221 (Vernon 2004); *see also* Tex. R. App. P. 52. Relator complains that respondent, the Honorable Mike Gomez, presiding judge of the 129th District Court of Harris County, has failed to rule on his motion for entry of default judgment.

Consideration of a motion that is properly filed and before the court is a ministerial act. [*State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 \(Tex. Crim. App.1987\)](#)

(orig.proceeding) (op. on reh'g). A relator must establish the trial court (1) had a legal duty to rule on the motion; (2) was asked to rule on the motion; and (3) failed to do so. [In re Keeter, 134 S.W.3d 250, 252 \(Tex. App. -- Waco 2003, orig. proceeding\)](#). A relator must show that the trial court received, was aware of, and asked to rule on the motion. *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App. -- Amarillo 2003, orig. proceeding). Relator did not attach a file-stamped copy of his motion demonstrating it is actually pending in the trial court. Instead, he refers to the clerk's record in an appeal currently pending before this court, No. 14-10-00055-CV, *Ralph O. Douglas v. Linda Porter and Marcelyn Curry*.

The trial court's failure to rule on the motion for entry of default judgment has been rendered moot by the final judgment entered in that case. Accordingly, we deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Seymore, Boyce, and Christopher.