

Court Of Appeals
Fourth Court of Appeals District of Texas
San Antonio



MEMORANDUM OPINION

No. 04-08-00613-CV

IN RE Eustorgio RESENDEZ

Original Mandamus Proceeding¹


PER CURIAM

Sitting: Alma L. López, Chief Justice
Santee Bryan Marion, Justice
Rebecca Simmons, Justice

Delivered and Filed: September 24, 2008

PETITION FOR WRIT OF MANDAMUS DENIED

Relator Eustorgio Resendez has filed a petition for writ of mandamus complaining of the district court's failure to set a hearing date to hear his petition for declaratory judgment consistent with this Court's opinion in *Resendez v. Garcia*, No. 04-05-00081-CV, 2005 WL 2654069 (Tex. App.—San Antonio October 19, 2005, orig. proceeding) (mem. op.), which reversed and remanded the case to the district court. Relator's burden in a mandamus proceeding is to provide this court with a record sufficient to establish his right to relief. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex.

¹  This proceeding arises out of Cause No. DC-02-268(A), styled *Eustorgio Guzman Resendez v. Juan Garcia and Heriberto Silva*, filed in the 229th Judicial District Court, Starr County, Texas.

1992); *see also* TEX. R. APP. P. 52.3(j), 52.7(a). Relator has not provided this court with a record upon which mandamus relief may be granted. Because relator is not entitled to the relief sought, the petition is denied. TEX. R. APP. P. 52.8(a).

Additionally, relator filed an Application for Leave to File Petition for Writ of Mandamus. No leave is required to file a petition for a writ of mandamus in this court. TEX. R. APP. P. 52. Therefore, relator's motion for leave to file is denied as moot.

PER CURIAM