



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-13-00328-CV

IN RE David A. EDWARDS

Original Mandamus Proceeding¹

PER CURIAM

Sitting: Karen Angelini, Justice
Santee Bryan Marion, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: June 5, 2013

PETITION FOR WRIT OF MANDAMUS DENIED

On May 24, 2013, Relator David A. Edwards filed a petition for writ of mandamus, complaining the trial court has failed to rule on his various motions. However, in order to be entitled to mandamus relief, Relator must establish the trial court: (1) had a legal duty to perform a non-discretionary act; (2) was asked to perform the act; and (3) failed or refused to do so. *In re Molina*, 94 S.W.3d 885, 886 (Tex. App.—San Antonio 2003, orig. proceeding). When a properly filed motion is pending before a trial court, the act of giving consideration to and ruling upon that motion is ministerial, and mandamus may issue to compel the trial judge to act. *See Safety-Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex. App.—San Antonio 1997, orig. proceeding). However, mandamus will not issue unless the record indicates that a properly filed motion has awaited disposition for an unreasonable amount of time. *See id.*

¹ This proceeding arises out of Cause No. 12-02-0185-CVA, in the 218th Judicial District Court, Atascosa County, Texas, the Honorable Stella Saxon presiding.

Relator has the burden of providing this court with a record sufficient to establish his right to mandamus relief. *See* TEX. R. APP. P. 52.7(a) (“Relator must file with the petition [] a certified or sworn copy of every document that is material to the relator’s claim for relief and that was filed in any underlying proceeding”); *see also* TEX. R. APP. P. 52.3(k)(1)(A); *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding).

Here, Relator asserts he filed various motions that the trial court has failed to rule on. However, he has not provided this court with a file stamped copy of any of the motions or any other documents to show that a properly filed motion is pending before the trial court and has been brought to the trial court’s attention. Based on the foregoing, we conclude Relator has not shown himself entitled to mandamus relief. Accordingly, relator’s petition for writ of mandamus is DENIED. *See* TEX. R. APP. P. 52.8(a).

PER CURIAM