

NO. 07-07-0228-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL B
AUGUST 21, 2007

IN RE ROB L. NEWBY, RELATOR

Before QUINN, C.J., and CAMPBELL and HANCOCK, JJ.

ON MOTION FOR REHEARING

Relator Rob L. Newby, acting *pro se*, has filed a motion for rehearing of our disposition of his petition for a writ of mandamus. We dismissed his petition in part and denied it in part, and now will overrule the motion for rehearing.

Relator's original petition alleged the Hon. David M. McCoy, judge of the 100th District Court, failed to take certain actions with respect to relator's civil suit despite relator's requests. We dismissed the petition in part and denied the petition in part as to the relief sought against Judge McCoy, finding relator failed to demonstrate the judge has refused to perform a nondiscretionary or ministerial act. Shortly after our original opinion was issued, relator filed a "motion to supplement the record," which incorporates his allegation Judge McCoy expressly refused to rule on pending motions. On rehearing he again alleges Judge McCoy has refused to rule on a pending motion.

As we noted on original submission, this Court has held that the acts of giving consideration to and ruling on motions properly filed and pending before a trial court are ministerial acts the performance of which, in a proper case, may be enforced by mandamus. *In re Christensen*, 39 S.W.3d 250, 251 (Tex.App.–Amarillo 2000) (orig. proceeding); see *Ex parte Bates*, 65 S.W.3d 133, 135 (Tex.App.–Amarillo 2001) (orig. proceeding); *In re Ramirez*, 994 S.W.2d 682, 683 (Tex.App.–San Antonio 1998) (orig. proceeding) (considering requests for mandamus relief); see also *Safety-Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex.App.–San Antonio 1997) (orig. proceeding). But the law is equally well-settled that one requesting mandamus relief bears the burden to provide a record sufficient to establish his right to the relief. See *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (stating standard); *In re Villareal*, 96 S.W.3d 708, 711 (Tex.App.–Amarillo) (orig. proceeding) (applying standard to claim of trial court’s failure to rule).¹ The rules governing original proceedings require a relator to provide certified or sworn copies of any order or other document showing the matter complained of. Tex. R. App. P. 52.3(j)(1)(A). Relator has not provided us with a record showing Judge McCoy’s refusal to act on a motion properly filed and pending in his court. Relator’s mere statement characterizing a response he alleges he received from Judge McCoy as one refusing to rule on relator’s motions does not meet the requirement of a record² establishing relator’s right to the relief

¹ Relator’s original petition for mandamus contained the request that we “excuse him from Rule [of Appellate Procedure] 52.7.” We dismissed the request as moot on original submission, but we could as well have denied it on its merits. Litigants proceeding *pro se*, like other litigants, must abide by the applicable rules of procedure. *Holt v. F. F. Enterprises*, 990 S.W.2d 756, 759 (Tex.App.–Amarillo 1998, pet. denied).

² For example, relator makes repeated references to correspondence he says he received from Judge McCoy, but relator has not provided us with any such correspondence.

he seeks. Having considered the supplemental materials relator has filed together with his motion for rehearing, we find he still has not demonstrated Judge McCoy has refused to perform a nondiscretionary or ministerial act. See *Villareal*, 98 S.W.3d at 711 (describing factors relevant to such determination). We overrule relator's motion for rehearing.

Per Curiam