



IN THE
TENTH COURT OF APPEALS

No. 10-10-00299-CV

IN RE JAMES C. FULLER

Original Proceeding

MEMORANDUM OPINION

James C. Fuller seeks a writ of mandamus compelling Respondent, the Honorable Barbara Hale, Judge of the County Court at Law of Walker County, to render a final judgment in his lawsuit. *See Fuller v. Moya*, No. 10-09-00294-CV, 2009 Tex. App. LEXIS 9596 (Tex. App.—Waco Dec. 16, 2009, no pet.) (dismissing Fuller’s appeal for lack of final judgment). We will deny Fuller’s mandamus petition.¹

There are three prerequisites for the granting of mandamus relief: (1) the lower court must have a legal duty to perform a nondiscretionary act; (2) the relator must make a demand for performance; and (3) the subject court must refuse that request.

¹ We apply Rule of Appellate Procedure 2 and disregard numerous deficiencies in Fuller’s mandamus petition. *See* TEX. R. APP. P. 2, 52.3(j).

O'Connor v. First Court of Appeals, 837 S.W.2d 94, 97 (Tex. 1992) (orig. proceeding); *In re Thirty-Four Gambling Devices*, 304 S.W.3d 503, 505 (Tex. App.—Amarillo 2009, orig. proceeding).

Here, Fuller has not provided a certified or sworn mandamus record indicating that he has requested Respondent to render a final judgment in his suit. See TEX. R. APP. P. 52.7(a)(1) (relator must file with mandamus 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”). Because Fuller has not established that he made a demand for performance, we deny his mandamus petition. See *O'Connor*, 837 S.W.2d at 97; *Thirty-Four Gambling Devices*, 304 S.W.3d at 505.

FELIPE REYNA
Justice

Before Chief Justice Gray,
Justice Reyna, and
Justice Davis
Petition denied
Opinion delivered and filed August 25, 2010
[OT06]