

NO. 12-11-00036-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN RE:

§

JAMES ALLEN LEE,

§

ORIGINAL PROCEEDING

RELATOR

§

*MEMORANDUM OPINION
PER CURIAM*

In this original proceeding, Relator James Allen Lee seeks a writ of mandamus requiring the trial court to rule on his motion for “Enforcement of Possessory Rights and for Contempt.” We deny the petition.

To obtain a writ of mandamus compelling the trial court to consider and rule on a motion, a relator must establish that the trial court (1) had a legal duty to perform a nondiscretionary 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). Generally, a trial court has a nondiscretionary duty to consider and rule on a motion within a reasonable time. *In re Thomas*, No. 12–05–00261–CV, 2005 WL 2155244, at *4 (Tex. App.—Tyler Sept. 7, 2005, orig. proceeding) (mem. op.). But a trial court cannot be expected to consider a motion not called to its attention. *See In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding). Merely filing a motion with the district clerk does not impute the clerk’s knowledge of the filing to the trial court. *Id.* at 228. Therefore, it is incumbent upon the relator to establish that the motion has been called to the trial court’s attention. *See id.*

The record in this proceeding includes a copy of one letter from Lee to the district clerk relating to the status of his motion. However, we cannot conclude from the record that Lee has requested a hearing on the motion or that the trial court has otherwise been made aware of the

motion. Consequently, Lee has not shown that he is entitled to mandamus relief. See *In re Chavez*, 62 S.W.3d at 228. Accordingly, Lee's petition for writ of mandamus is *denied*.

Opinion delivered March 16, 2011.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)