

Opinion filed July 26, 2018



In The

# Eleventh Court of Appeals

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No. 11-18-00136-CV

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IN RE GARY MARTIN

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Original Mandamus Proceeding

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## MEMORANDUM OPINION

This proceeding involves a suit related to fraud and the misappropriation of assets from an estate. According to the petition, a default judgment was taken as to liability against the executor, Brenda Jurgens, who is the real party in interest in this proceeding and the sister of the relator. The trial court held a hearing as to damages on December 20, 2017, but has yet to enter a judgment in the underlying cause even though Relator has requested that the trial court do so. On May 29, 2018, Relator, Gary Martin, filed in this court an original mandamus proceeding in which he seeks to compel the judge of the Midland County Court at Law No. 2, the Honorable Marvin L. Moore, to enter a final judgment in trial court cause no. CC17920. We conditionally grant Relator's petition for writ of mandamus.

In his response to the petition for writ of mandamus, Judge Moore informed this court that he was waiting for Relator to amend his petition. The amended petition was filed in the trial court clerk's office on June 5, 2018. However, as of this date, no judgment has been rendered by the trial court. To obtain mandamus relief, a relator must show both that the trial court has clearly abused its discretion and that the relator has no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding); *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding). We believe that, under the circumstances here, Relator has met these requirements.

Therefore, we conditionally grant Relator's petition for writ of mandamus. The Honorable Judge Marvin L. Moore is directed to enter a judgment in trial court cause no. CC17920. A writ of mandamus will issue only if Judge Moore fails to act by August 10, 2018.

PER CURIAM

July 26, 2018

Panel consists of: Willson, J.,  
Bailey, J., and Wright, S.C.J.<sup>1</sup>

Willson, J., not participating.

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<sup>1</sup>Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.