

Denied and Opinion Filed November 16, 2016



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01331-CV

IN RE COKINOS, BOISIEN & YOUNG, Relator

Original Proceeding from the 192nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-03317

MEMORANDUM OPINION

Before Justices Lang, Brown, and Whitehill
Opinion by Justice Whitehill

Before the Court is relator's November 14, 2016 petition for writ of mandamus and relator's November 15, 2016 emergency motion to stay underlying litigation. Relator seeks relief from a verbal ruling ordering relator to produce e-mails relator maintains are privileged attorney-client communications and subject to the work product privilege. For the reasons discussed below, we deny the petition without prejudice.

Rule 52.3(k)(1)(A) requires the relator to file an appendix that includes a certified or sworn copy of the order complained of, "or any other document showing the matter complained of." TEX. R. APP. P. 52.3(k)(1)(A). Although an appellate court may issue a writ of mandamus based on a court's oral pronouncements, it may do so only if the trial court's ruling is a clear, specific, and enforceable order that is adequately shown by the record. *In re Penney*, 05-14-00503-CV, 2014 WL 2532307, at * 2, n. 3 (Tex. App.—Dallas June 4, 2014, no pet.) (citing *In re Bledsoe*, 41 S.W.3d 807, 811 (Tex. App.—Fort Worth 2001, orig. proceeding); *In re Kelton*,

No. 12–11–00355–CR, 2011 WL 5595219, at *1 (Tex. App.—Tyler Nov.17, 2011, orig. proceeding) (mem. op.)). An appellate court can determine whether an oral order meets these criteria by reviewing the reporter’s record from the hearing. *In re Penney*, 2014 WL 2532307 at * 2; *see also In re Winters*, No. 05–08–01486–CV, 2008 WL 5177835, at *1 n. 1 (Tex. App.—Dallas Dec.11, 2008, orig. proceeding) (mem. op.).

Here, the trial court has not signed a written order, and relator has not provided a reporter’s record of the hearing at which the oral ruling was made. Under these circumstances, the oral ruling is not subject to mandamus review and may not be stayed. *See, e.g. In re Dennis*, 14-11-00595-CV, 2011 WL 2791126, at *1 (Tex. App.—Houston [14th Dist.] July 14, 2011, no pet.) (citing Rule 52.3(k)(1)(A) and denying motion to stay court’s oral ruling where relator did not file a written order or record of an oral order); *see also In re Kelton*, 2011 WL 5595219 at *1 (denying petition for writ of mandamus where relator had not furnished a reporter’s record of the hearing at which the oral ruling was made or any other document showing the ruling); *see also In re Bledsoe*, 41 S.W.3d at 812 (holding that an oral ruling is subject to mandamus review only if it is clear, specific, and enforceable). Accordingly, we deny relator’s petition for writ of mandamus without prejudice and deny relator’s emergency motion to stay underlying litigation.

/Bill Whitehill/

BILL WHITEHILL
JUSTICE

161331F.P05