

Denied and Opinion Filed November 7, 2017



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-01251-CV

IN RE KENNETH BUHOLTZ, Relator

Original Proceeding from the County Court at Law No. 4
Collin County, Texas
Trial Court Cause No. 004-01275-2016

MEMORANDUM OPINION

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

In this original proceeding, relator seeks a writ of mandamus to order the trial court to rule on his supplemental cause of action for fraud. “‘When a motion is properly filed and pending before a trial court, the act of giving consideration to and ruling upon that motion is a ministerial act,’ and mandamus may issue to compel the trial judge to act.” *Safety-Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex. App.—San Antonio 1997, orig. proceeding). To obtain mandamus relief for the trial court’s refusal to rule on a motion, a relator must establish: (1) the motion was properly filed and has been pending for a reasonable time; (2) the relator requested a ruling on the motion; and (3) the trial court refused to rule. *In re Buholtz*, No. 05-16-01312-CV, 2017 WL 462361, at *1 (Tex. App.—Dallas Jan. 31, 2017, orig. proceeding); *Crouch v. Shields*, 385 S.W.2d 580, 582 (Tex. App.—Dallas 1964, writ ref’d n.r.e.). To be properly filed and timely presented, a motion must be presented to a trial court at a time when the court has authority to act on the motion. *See In re Hogg-Bey*, No. 05-15-01421-CV, 2015 WL 9591997,

at *1–2 (Tex. App.—Dallas Dec. 30, 2015, orig. proceeding) (mem. op., not designated for publication). It is relator’s burden to provide the court with a record sufficient to establish his right to relief. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex.1992); TEX. R. APP. P. 52.3(k), 52.7(a). Relator has not filed a certified or sworn record as required by rule 52.7(a)(1) of the rules of appellate procedure. Although this deficiency alone constitutes sufficient reason to deny mandamus relief, in the interest of judicial economy we address the petition.

Relator has not shown that he has properly filed with and timely presented to the trial court a motion for ruling on the fraud claim, nor has he shown that he has asked for the trial court to rule on such a motion and the trial court has refused to rule. Relator is, therefore, not entitled to mandamus relief. Accordingly, we deny relator’s petition for writ of mandamus.

/Douglas S. Lang/
DOUGLAS S. LANG
JUSTICE

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