

DENY; and Opinion Filed March 9, 2018.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-18-00233-CV

IN RE JANINE CHARBONEAU, Relator

**Original Proceeding from the 417th Judicial District Court
Collin County, Texas
Trial Court Cause No. 417-04514-2017**

MEMORANDUM OPINION

Before Justices Lang-Miers, Fillmore, and Stoddart
Opinion by Justice Lang-Miers

This original proceeding relates to an action for expedited foreclosure brought in the trial court pursuant to Rule 736 of the Texas Rules of Civil Procedure. In her petition for writ of mandamus, relator complains that the trial court has not ruled on her motion to dismiss the underlying proceeding and argues that the trial court has a mandatory duty to grant the motion to dismiss. Relator seeks a writ ordering the trial court to grant her motion to dismiss. We deny the relief requested.

“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).

Here, the record does not show that relator has requested a hearing on her motion to dismiss, requested a ruling on her motion to dismiss, or that the trial court has refused to set a hearing or refused to rule on the motion to dismiss. Accordingly, relator has not established her right to a writ of mandamus ordering the trial court to rule on her motion to dismiss. Moreover, the record does not show that the trial court has ruled on the Rule 736 application. We, therefore, do not reach the question of whether the trial court is required to grant relator's motion to dismiss and to deny the Rule 736 application for expedited foreclosure.

Further, relator has not shown that the trial court abused its discretion by holding a hearing on the real party in interest's Rule 736 application for expedited foreclosure before ruling on relator's motion to dismiss the Rule 736 application. Relator filed a response to the Rule 736 application pursuant to Rule 736.5 and filed a motion to dismiss that application pursuant to Rule 736.11(c). Citing Rules 736.6 and 736.7, relator argues that the trial court abused its discretion by setting the real party in interest's Rule 736 application for hearing without first holding a hearing on relator's Rule 736.11(c) motion to dismiss that application. Rule 736.6, however, requires the trial court to hold a hearing on a Rule 736 application when, as here, a response to the application is filed. TEX. R. CIV. P. 736.6. Additionally, relator cites no authorities, and the Court has found

none, addressing whether a trial court is prohibited from conducting a hearing on a Rule 736 application if a motion to dismiss that application has been filed. And a trial court maintains the inherent authority to control its own docket. *In re Mendoza*, 131 S.W.3d 167, 168 (Tex. App.—San Antonio 2004, orig. proceeding). We conclude that the trial court did not abuse its discretion by holding such a hearing here.

Based on the record before us, we conclude relator has not shown she is entitled to the relief requested. Accordingly, we deny relator's petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

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