

Deny and Opinion Filed September 30, 2021



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-21-00822-CV

IN RE JR STAR CORPORATION, Relator

Original Proceeding from the County Court at Law No. 2
Dallas County, Texas
Trial Court Cause No. CC-19-03629-B

MEMORANDUM OPINION

Before Justices Schenck, Nowell, and Garcia
Opinion by Justice Garcia

In this original proceeding, relator challenges the trial court’s March 5, 2021 ruling on a motion for a spoliation instructions and sanctions filed by the Real Party in Interest (RPI), Patricia Cyzauskas. A writ of mandamus issues to correct a clear abuse of discretion when no adequate remedy by appeal exists. *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding). Although mandamus is not an equitable remedy, its issuance is largely controlled by equitable principles. *Rivercenter Assocs. v. Rivera*, 858 S.W.2d 366, 367 (Tex. 1993) (orig. proceeding). One such principle is that “equity aids the diligent and not those who slumber on their rights.” *Id.* (internal brackets and quotation marks omitted).

An unexplained delay of four months or more can constitute laches and result in denial of mandamus relief. *See Rivera*, 858 S.W.2d at 366 (unexplained delay of more than four months); *Int’l Awards, Inc. v. Medina*, 900 S.W.2d 934, 936 (Tex. App.—Amarillo 1995, orig. proceeding) (unexplained delay of more than four months and waited until eve of trial); *Furr’s Supermarkets, Inc. v. Mulanax*, 897 S.W.2d 442, 443 (Tex. App.—El Paso 1995, no writ) (unexplained four-month delay in challenging discovery orders); *Bailey v. Baker*, 696 S.W.2d 255, 256 (Tex. App.—Houston [14th Dist.] 1985, orig. proceeding) (unexplained four-month delay and filed two weeks before trial).

Here, relators did not file the petition for writ of mandamus until September 21, 2021—more than six months after the challenged order. We conclude that relators’ unexplained delay bars their right to mandamus relief. *See Furr’s Supermarkets*, 897 S.W.2d at 443.

Accordingly, we deny the petition for writ of mandamus. Having denied mandamus relief, we also deny relator’s motion for stay as moot.

/Dennise Garcia/
DENNISE GARCIA
JUSTICE

210822F.P05