

Deny Opinion Filed November 16, 2021



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

No. 05-21-00826-CV

**IN RE WEATHERALL FAMILY FUNERAL SERVICES, LLC D/B/A
ETERNAL REST FUNERAL HOME, Relator**

**Original Proceeding from the 298th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-15878**

MEMORANDUM OPINION

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

We withdraw our opinion of November 8, 2021 and issue this opinion in its place.

In this original proceeding, relator challenges the trial court's April 23, 2021 order striking relator's designation of a responsible third party. 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).

Under prior holdings of this court and others, 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); *In re Wages & White Lion Investments*, No. 05-21-00650-CV, 2021 WL 3276875 (Tex. App.—Dallas, July 30, 2021, orig. proceeding) (mem. Op.) (unexplained delay of over four months from the oral ruling and three months from the date the order was signed); *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, relator did not file the petition for writ of mandamus until September 22, 2021—five months after the challenged order. We conclude that relator’s 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.

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

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