

Opinion issued October 30, 2008



In The  
**Court of Appeals**  
For the  
**First District of Texas**

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NO. 01-08-00868-CV

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**IN RE DOYLE ARRANT AND LOVE PIPELINE SERVICES, INC.,  
Relators**

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**Original Proceeding on Petition for Writ of Mandamus**

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**MEMORANDUM OPINION**

Relators, Doyle Arrant and Love Pipeline Services, Inc., have filed a petition for a writ of mandamus complaining of Judge John Donovan's<sup>1</sup> "fail[ure] to transfer the case" to another county, based on relators' August 7, 2008 motion to transfer

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<sup>1</sup> The Honorable John Donovan, judge of the 61st District Court of Harris County, Texas. The underlying lawsuit is *EMA USA, Inc. v. Doyle Arrant & Love Pipeline Services, Inc.*, No. 2008-46554 (61st Dist. Ct., Harris County, Tex.).

venue.

Relators' mandamus petition acknowledges that, as of the date of the petition's filing, the trial judge has not yet ruled on their motion to transfer venue. Likewise, the mandamus record does not indicate that the trial judge has ruled orally or in writing on the motion.

"A party's right to mandamus relief generally requires a predicate request for some action *and a refusal of that request.*" *In re Perritt*, 992 S.W.2d 444, 446 (Tex. 1999) (emphasis added). Nothing demonstrates that there has been any such refusal in this case. Relators' challenges are to the merits of their motion to transfer venue, as opposed to the trial judge's failure to rule on their motion: their challenges are thus ones that are not ripe for our consideration. *Compare In re Pepsico, Inc.*, 87 S.W.3d 787, 790 (Tex. App.—Texarkana 2002, orig. proceeding) (declining to reach challenge to merits of whether Texas Civil Practice and Remedies Code section 65.023(a)'s mandatory venue statute for injunctions applied to claims, so that mandamus would lie, because question was not ripe: trial judge had not yet ruled on "merits" issue of whether section 65.023 applied, but had instead based his ruling on procedural ground) *and In re Gore*, 251 S.W.3d 696, 701 (Tex. App.—San Antonio 2007, orig. proceeding) (declining to consider challenge to trial judge's denial of motion to compel discovery, when judge had not yet ruled on motion's merits because

it had improperly abated case, which rendered motion's merits unripe for determination in mandamus proceeding considering propriety of abatement) *with In re MHI P'ship, Ltd.*, 7 S.W.3d 918, 923 (Tex. App.—Houston [1st Dist.] 1999, orig. proceeding) (sustaining mandamus challenge that trial judge abused his discretion by failing to rule on motion to compel arbitration until after completion of discovery, when statute required that arbitration ruling be made summarily).

We **dismiss** the mandamus petition because it raises matters that are not ripe.

**PER CURIAM**

Panel consists of Justices Taft, Keyes, and Alcala.