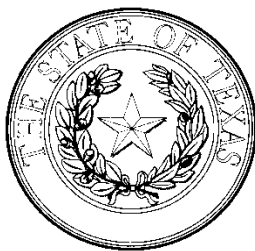


Opinion issued December 16, 2011



In The
Court of Appeals
For The
First District of Texas

NO. 01-11-01048-CV

IN RE CHARLES W. BISHOP, II, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Charles W. Bishop, II, has filed a pro se petition for writ of mandamus in this court. *See* TEX. GOV'T CODE § 22.221 (Vernon 2004); *see also* TEX. R. APP. P. 52. Relator complains that respondent* has not ruled on his

* Respondent is The Honorable Reece Rondon of the 234th District Court, Harris County, Texas. Relator informs us that this original proceeding arises out of Cause No. 2011–39834, styled *Charles W. Bishop, II v. Bruce Robinson et. al*,

“Declaration for Entry of Default.”

Mandamus relief is available only to correct a clear abuse of discretion when there is no adequate remedy by appeal. *In re Odyssey Healthcare, Inc.*, 310 S.W.3d 419, 422 (Tex. 2010); *In re Team Rocket, L.P.*, 256 S.W.3d 257, 259 (Tex. 2008) (“We grant the extraordinary relief of mandamus only when the trial court has clearly abused its discretion and the relator lacks an adequate appellate remedy.”). We have previously stated, “A party seeking mandamus relief must show that (1) the trial court had a legal duty to act, (2) there was a demand for performance, and (3) there was a refusal to act.” *In re Smith*, 263 S.W.3d 93, 96 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding) (citing *Stoner v. Massey*, 586 S.W.2d 843, 846 (Tex. 1979)).

When a motion is properly filed and pending before a trial court, the act of giving consideration to and ruling on that motion is a ministerial act, and mandamus may issue to compel the trial court to act. *See Safety-Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex. App.—San Antonio 1997, orig. proceeding); *see also Eli Lilly and Co. v. Marshall*, 829 S.W.2d 157, 158 (Tex. 1992). To establish that the trial court refused to rule on a pending motion, the relator must provide a record demonstrating that he asked the trial court for a ruling on his motion and that the trial court refused to rule. *See Barnes v. State*, 832 S.W. 2d

pending in the 234th District Court, Harris County, Texas, the Honorable Reece Rondon, presiding.

424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding); *see also Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding). The trial court is not required to consider a motion unless it is called to its attention. *Smith*, 263 S.W.3d at 96. The mandamus record must show that the motion was presented to the trial court and that the trial court refused to rule on it. *See In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding).

According to relator, he filed his “Declaration for Entry of Default” in the trial court on September 21, 2011. He contends that he sent a letter to the trial court on November 1, 2011 requesting that it rule on his Declaration for Entry of Default. Relator also asserts that on November 14, 2011 he filed his “Motion Objecting to the Court’s Refusal to Rule.” Relator attaches copies of these documents to his mandamus petition but does not provide a file-stamped copy of these documents or any other documentation to show that his Declaration for Entry of Default, or the other documents appended to his mandamus petition, have been filed and are pending before the trial court. Nor does the record show that the trial court has actually been made aware of the Declaration for Entry of Default or refused to rule on it, as relator claims. *See In re Davidson*, 153 S.W.3d 490, 491 (Tex. App.—Amarillo 2004, orig. proceeding); *see also Smith*, 263 S.W.3d at 96; *Barnes*, 832 S.W. 2d at 426. Lastly, we note that relator’s Declaration for Entry of Default does not request the trial court to render a default judgment or to grant any

other affirmative relief to relator; rather, it simply contains a statement or “declaration” by relator that the defendants in the trial court have failed to answer or defend against his suit.

All petitioners for writ of mandamus, including those acting pro se, must furnish a record sufficient to support the claim for mandamus relief. *See Barnes*, 832 S.W.2d at 426; *see also Walker*, 827 S.W.2d at 837. Here, relator has not provided us with a record showing that the trial court received a motion requesting relief, was made aware of it, was asked to rule on it, and refused to rule. *See Davidson*, 153 S.W.3d at 491; *see also Barnes*, 832 S.W.2d at 426. Accordingly, we deny the petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a).

Laura Carter Higley
Justice

Panel consists of Justices Keyes, Higley, and Massengale.