

Opinion issued July 12, 2016



In The
Court of Appeals
For The
First District of Texas

NO. 01-16-00206-CV

IN RE CAROLINE CHIKERE, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Caroline Chikere, filed a petition for writ of mandamus seeking to compel the respondent trial judge to vacate the January 19, 2016 order granting the motion for new trial, and to reinstate the default final decree of divorce, signed on May 5, 2015.¹ On March 10, 2016, this Court granted the relator's emergency

¹ The underlying case is *In the Matter of the Marriage of Caroline Chikere and Oakley Chikere*, Cause No. 14-DCV-214132, pending in the 387th District Court of Fort Bend County, Texas, the Honorable Brenda Mullinix presiding.

motion to stay the April 25, 2016 trial, pending resolution of her petition, and requested a response by real party in interest Oakley Chikere (“RPI Oakley”).

On April 20, 2016, this Court, among other things, granted the motion by RPI Oakley to abate this original proceeding for the trial court to rule on his “Motion to Substit[ut]e Copy of Order Granting Motion for New Trial for Missing Original” (hereinafter “Motion to Substitute”). On June 1, 2016, the trial clerk filed a supplemental clerk’s record in this Court which included, among other documents, the judgment for child support arrearage. On June 10, 2016, the court reporter filed a supplemental reporter’s record in this Court which included the agreement dictated on the record from the hearing held on April 21, 2016.

On June 29, 2016, relator filed a “Motion to Withdraw Petition for Writ of Mandamus,” which we construe as a motion to dismiss. *See* TEX. R. APP. P. 42.1(a)(1). Relator explained that, during the April 21, 2016 hearing, the parties reached an agreement on the record whereby RPI Oakley would withdraw his Motion to Substitute and motion for new trial in consideration for relator agreeing that RPI Oakley’s child support arrearage would be a certain amount through April 30, 2016, and that relator would withdraw her mandamus petition.² Although relator’s motion does not contain a certificate of conference, the motion contains a

² On July 5, 2016, the trial clerk filed a supplemental clerk’s record in this Court containing, among other documents, the order, signed on June 29, 2016, granting RPI Oakley’s motion to withdraw his Motion to Substitute and motion for new trial.

certificate of service on counsel for RPI Oakley, has been on file with the Court for more than ten days, and no party has responded to the motion. *See* TEX. R. APP. P. 10.1(a)(5), 10.3(a)(2).

Accordingly, we withdraw the abatement orders and reinstate this mandamus proceeding, lift the stay imposed on March 10, 2016, construe relator's motion to withdraw as a motion to dismiss and grant the motion, and dismiss the petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Higley, Bland, and Massengale.