

Opinion issued August 10, 2021



In The
Court of Appeals
For The
First District of Texas

NO. 01-21-00310-CV

IN RE AUTRY LEE JONES, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Autry Lee Jones, acting pro se, has filed a petition for writ of mandamus asking this Court to direct the trial court rule on relator's motion "to reopen the estate of Bertha Pope" and "motion for subpoenas" filed by relator.¹

¹ The underlying case is *In the Estate of Bertha Pope, Deceased*, Cause No. 407996, pending in Probate Court No. 4 of Harris County, Texas, the Honorable James Horwitz presiding.

Relator’s petition does not comply with the requirements enumerated in Texas Rule of Appellate Procedure 52.3. *See* TEX. R. APP. P. 52.3(g), (k). For example, the petition lacks an adequate appendix. *See* TEX. R. APP. P. 52.3(k)(1) (requiring original proceedings to be filed with appendix that contains “a certified or sworn copy of any order complained of, or any other document showing the matter complained of”). Although the appendix includes the motion to compel a ruling on relator’s “motion for subpoenas,” it does not include a motion by relator “to reopen the estate of Bertha Pope.” In the absence of an adequate appendix or record, this Court cannot evaluate the merits of relator’s petition. *See In re Jones*, No. 01-20-00575-CV, 2020 WL 9071579, at *1 (Tex. App.—Houston [1st Dist.] Sept. 10, 2020, orig. proceeding [mand. denied]) (mem. op.) (in previous mandamus proceeding involving relator, explaining “[i]n the absence of an adequate appendix or record, this Court cannot evaluate the merits of relator’s petition”).

Relator’s petition also is deficient because there is no showing that respondent refused to rule on relator’s motions. *See O’Connor v. First Court of Appeals*, 837 S.W.2d 94, 97 (Tex. 1992) (to obtain mandamus relief, relator must show respondent had legal duty to perform non-discretionary act, that relator made demand for performance, and that respondent refused); *In re Dong Sheng Huang*, 491 S.W.3d 383, 385 (Tex. App.—Houston [1st Dist.] 2016, orig. proceeding)

(“Filing a request for a ruling is insufficient to call the matter to the judge’s attention because a judge may be unaware of the request. Instead, the party demanding a ruling must set its request either for submission or a hearing.”).

Accordingly, we deny relator’s petition for writ of mandamus. All pending motions are dismissed as moot.

PER CURIAM

Panel consists of Justices Goodman, Landau, and Countiss.