

**Petition for Writs of Mandamus and Prohibition Denied and Memorandum Opinion
filed September 16, 2010.**



In The

Fourteenth Court of Appeals

**NO. 14-10-00851-CV
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IN RE TED LAWRENCE ROBERTSON, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS**

MEMORANDUM OPINION

Relator Ted Lawrence Robertson filed a petition seeking writs of mandamus and prohibition. *See* Tex. Gov't Code Ann. § 22.221 (Vernon 2004); *see also* Tex. R. App. P. 52. Robertson asks that we prohibit the respondent, the Honorable Bonnie Crane Hellums, presiding judge of the 247th District Court of Harris County, from ruling on his petition for bill of review and direct the respondent to transfer the petition to the 312th District Court. We deny the petition.

According to the petition, in 2001, the 312th District Court entered a default judgment and protective order against Robertson. In 2004, a jury convicted Robertson of violation of the protective order by threatening his ex-wife with imminent bodily injury and assessed punishment at twenty-five years in prison, after finding two enhancements true. The First Court affirmed Robertson's conviction. *See Robertson v. State*, 175 S.W.3d 359 (Tex. App.—Houston [1st Dist.] 2004, pet. ref'd).

Robertson complains that the respondent has not ruled on his motion to transfer his petition for bill of review. When a properly filed motion is pending before the 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. *Safety-Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex. App.—San Antonio 1997, orig. proceeding). To establish that the trial court abused its discretion by failing to rule, the relator must show that the trial court: (1) had a legal duty to perform a nondiscretionary act; (2) was asked to perform that act; and (3) failed or refused to do so. *In re Shredder Co., L.L.C.*, 225 S.W.3d 676, 679 (Tex. App.—El Paso 2006, orig. proceeding). Specifically, a relator must show that the trial court received the motion, was aware of it, and was asked to rule on the motion. *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding).

Robertson has not demonstrated that he is entitled to extraordinary relief. Robertson has not provided this court with a record showing that the 247th District Court received the motion, was aware of it, was asked to rule on it, and refused to rule. Filing a document with the district clerk does not mean the trial court is aware of it; nor is the clerk's knowledge imputed to the trial court. *In re Hearn*, 137 S.W.3d 681, 685 (Tex. App.—San Antonio 2004, orig. proceeding); *Villarreal*, 96 S.W.3d at 710 n. 2. Therefore, no abuse of discretion is shown. *See In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding).

Robertson is also not entitled to a writ of prohibition. A writ of prohibition is used to enforce our jurisdiction. *In re Garza*, 153 S.W.3d 97, 103 (Tex. App.—San Antonio

2004, orig. proceeding). The writ is typically used to protect the subject matter of an appeal or to prohibit an unlawful interference with the enforcement of our orders or judgments. *See Holloway v. Fifth Court of Appeals*, 767 S.W.2d 680, 683 (Tex. 1989). We have no pending appeal or judgment to protect from interference.

Accordingly, we deny relator's petition for writs of mandamus and prohibition.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Yates and Sullivan.