

**Petition for Writ of Mandamus Denied and Memorandum Opinion filed
October 10, 2017.**



In The

Fourteenth Court of Appeals

NO. 14-17-00753-CV

IN RE JACK H. MERINO, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
125th District Court
Harris County, Texas
Trial Court Cause No. 2016-77418A**

MEMORANDUM OPINION

On September 27, 2017, relator Jack H. Merino filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. § 22.221 (West 2004); *see also* Tex. R. App. P. 52. In the petition, relator asks this court to compel the Honorable Kyle Carter, presiding judge of the 125th District Court of Harris County, to vacate his August 11, 2017 order granting the real party in interest's motion for new trial. According to relator's petition, the trial court signed a final judgment against real party Ivory Carter Enterprises, Inc., on February 28, 2017. Relator contends that

real party filed a motion for new trial challenging the judgment, but not until 118 days after the judgment became final. Thus, relator asserts that the trial court's August 11, 2017 order granting the motion for new trial is void because the trial court's plenary power had expired when it signed the order.

It is relator's burden to comply with the rules of appellate procedure when seeking mandamus relief. Among the applicable rules are Texas Rules of Appellate Procedure 52.3(g) (requiring statement of facts to be supported by references to record and appendix), 52.3(j) (requiring certification that every factual statement in the petition is supported by competent evidence included in the appendix or record), 52.3(k)(1)(A) (requiring an appendix containing a certified or sworn copy of any order complained of), and 52.7(a) (requiring mandamus record). Relator has not complied with the above rules and therefore his petition does not provide a basis for the court to evaluate the merits of his complaint or grant relief. *See Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding); Tex. R. App. P. 52.3(g), 52.3(j), 52.3(k)(1), 52.7(a).

Relator has not established that he is entitled to mandamus relief. Accordingly, we deny relator's petition for writ of mandamus without prejudice to re-filing a petition and record complying with the rules of procedure.

PER CURIAM

Panel consists of Chief Justice Frost and Justices Boyce and Jewell.