

**Petition for Writ of Mandamus Conditionally Granted and Memorandum Opinion filed August 29, 2023.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-23-00484-CV**

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**IN RE TRUSTMARK NATIONAL BANK, GABRIELE R. MERRILL,  
REED C. COOK, AND JENNIFER LONG, Relators**

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**ORIGINAL PROCEEDING  
WRIT OF MANDAMUS  
152nd District Court  
Harris County, Texas  
Trial Court Cause No. 2019-07104**

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**MEMORANDUM OPINION**

On July 13, 2023, relators Trustmark National Bank, Gabriele R. Merrill, Reed C. Cook, and Jennifer Long filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. § 22.221; *see also* Tex. R. App. P. 52. In the petition, relators ask this court to compel the Honorable Robert K. Schaffer, presiding judge of the 152nd District Court of Harris County, to rule on relators' motion to judgment filed July 25, 2022.

Ordinarily, to be entitled to a writ of mandamus, the relator must show that the trial court abused its discretion and relator does not have an adequate remedy

by appeal. *In re C.J.C.*, 603 S.W.3d 804, 811 (Tex. 2020) (orig. proceeding); *In re N. Cypress Med. Ctr. Operating Co.*, 559 S.W.3d 128, 130 (Tex. 2018) (orig. proceeding). When a motion is properly pending before a trial court, the act of considering and ruling on it is ministerial, and the appellate court can order a writ of mandamus to be issued to compel the trial court to act. *Eli Lilly & Co. v. Marshall*, 829 S.W.2d 157, 158 (Tex. 1992) (orig. proceeding) (per curiam). To establish that the trial court abused its discretion by failing to rule, a relator must establish that the trial court: (1) had a legal duty to rule on the motion; (2) was asked to rule on the motion; and (3) failed or refused to rule on the motion within a reasonable time. *See O'Connor v. First Court of Appeals*, 837 S.W.2d 94, 97 (Tex. 1992) (orig. proceeding).

After considering the mandamus record, we conclude that relators are entitled to the requested relief and are confident that the trial judge will rule on relators' motion for judgment on or before **September 29, 2023**. In the unlikely event that the trial court does not timely rule, we will consider a motion to instruct the clerk to issue a writ of mandamus.

PER CURIAM

Panel consists of Justices Wise, Bourliot, and Spain.