

*Court Of Appeals
Fourth Court of Appeals District of Texas
San Antonio*



MEMORANDUM OPINION

No. 04-09-00181-CV

IN RE Jerry WANZER

Original Mandamus Proceeding¹


PER CURIAM

Sitting: Catherine Stone, Chief Justice
Rebecca Simmons, Justice
Marialyn Barnard, Justice

Delivered and Filed: June 24, 2009

PETITION FOR WRIT OF MANDAMUS DENIED

On March 30, 2009, relator Jerry Wanzer filed a petition for writ of mandamus, seeking to compel the trial court to enter a final order in cause numbers 04-03-00051-CVK, 06-11-00140-CVK, 07-12-00177-CVK, and 07-12-00179-CVK. However, on May 8, 2009 the trial court signed an order of dismissal and final judgment in each of the cases complained of. Therefore, this portion of the petition for writ of mandamus is now moot.

¹  This proceeding arises out of Cause Nos. 04-03-00051-CVK, 04-04-00069-CVK, 06-11-00140-CVK, 07-12-00177-CVK, and 07-12-00179-CVK, filed in the 81st Judicial District Court, Karnes County, Texas, the Honorable Ron Carr presiding.

Relator also complains that as to cause number 04-04-00069-CVK, the trial court has refused to refile his lawsuit that was previously dismissed without prejudice. However, it is relator's burden to provide this court with a record sufficient to establish his right to relief. *See Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992); *see also* TEX. R. APP. P. 52.3(k), 52.7(a). Relator has not provided this court with a file stamped copy of the petition he claims to have tried to refile in 2007. Relator relies on a hand written note, purportedly from the clerk of the court, that indicates that the relator's request that seeks to determine when his case was refiled is "on the judge's desk." This is not a record sufficient to establish that relator properly filed a petition that the trial court has refused to refile. *See Walker*, 827 S.W.2d at 837; *see also* TEX. R. APP. P. 52.3(k), 52.7(a). Accordingly, we deny the petition for writ of mandamus and all other relief requested as moot.

Additionally, relator filed an Application for Leave to File Petition for Writ of Mandamus. No leave is required to file a petition for a writ of mandamus in this court. TEX. R. APP. P. 52. Therefore, relator's motion for leave to file is denied as moot.

PER CURIAM