



Fourth Court of Appeals San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00283-CV

IN RE ELIZABETH BENAVIDEZ ELITE AVIATION, INC.

Original Mandamus Proceeding¹

PER CURIAM

Sitting: Rebeca C. Martinez, Justice
 Patricia O. Alvarez, Justice
 Irene Rios, Justice

Delivered and Filed: May 15, 2019

PETITION FOR WRIT OF MANDAMUS DENIED

In this original proceeding, relator asks this court to compel the trial court to grant its no-evidence motion for summary judgment, which it filed on March 4, 2019. We deny the petition for writ of mandamus.

DISCUSSION

Upon the filing of a no-evidence motion for summary judgment, “[t]he court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.” TEX. R. CIV. P. 166a(i). Because the real party in interest did not respond to relator’s no-evidence motion for summary judgment, relator asserts the trial court had no discretion

¹ This proceeding arises out of Cause No. 2017CVK002669-D3, styled *Laredo Jet Center, LLC v. City of Laredo, et al.*, pending in the 341st Judicial District Court, Webb County, Texas, the Honorable Rebecca Ramirez Palomo presiding.

to refuse to grant its motion, and this court has the authority to issue a writ directing the trial court to grant the motion.

Although Rule 166a(i) plainly states that the motion “must” be granted absent a proper response, we do not have the authority by mandamus to require the trial court to grant relator’s pending motion. *Crofts v. Court of Civil Appeals*, 362 S.W.2d 101, 104-05 (Tex. 1962) (orig. proceeding) (appellate court “may not tell the district court what judgment to enter”); *In re Mission Consol. Indep. Sch. Dist.*, 990 S.W.2d 459, 460 (Tex. App.—Corpus Christi 1999, orig. proceeding) (“we do not have the authority by mandamus . . . to require the trial court to grant the present ‘no evidence’ motion for summary judgment”). Therefore, we deny relator’s petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a).

PER CURIAM