

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-17-00396-CV

IN RE LEON ANTHONY CALLIHAM BENJAMIN

Original Proceeding
County Court of Jefferson County, Texas
Trial Cause No. 98114

MEMORANDUM OPINION

In this mandamus proceeding, Leon Anthony Calliham Benjamin, asserts that he is seeking to enforce a mandatory venue provision. *See generally* Tex. Civ. Prac. & Rem. Code Ann. § 15.0642 (West 2017). Benjamin does not suggest what mandatory venue provision applied, nor does he explain how it was raised and presented to the trial court. Furthermore, Benjamin states that he filed an application to declare heirship in 2009, and he complains that the trial court has allowed the probate case to languish for eight years without ruling on Benjamin's motions, but the docket sheet he included in his appendix indicates that the will was admitted to

probate in 2010, and he has not shown that circumstances exist that would require the trial court to conduct a proceeding to declare heirship. *See* Tex. Est. Code Ann. § 202.002 (West 2014).

Benjamin failed to include with his mandamus petition “a certified or sworn copy of any order complained of, or any other document showing the matter complained of[]” or that is “material to the relator’s claim for relief and that was filed in any underlying proceeding[.]” Tex. R. App. P. 52.3(k)(1); 52.7(a)(1).¹ Without a file-stamped or certified copy of his “motions,” Benjamin has not shown that such documents are pending in the trial court. *See In re Blakeney*, 254 S.W.3d 659, 661–62 (Tex. App.—Texarkana 2008, orig. proceeding). Nor has he shown that he took action to alert the trial court that it had not yet considered the “motions.” *Id.*; *In re Dong Sheng Huang*, 491 S.W.3d 383, 385-86 (Tex. App.—Houston [1st Dist.] 2016, orig. proceeding). Therefore, Benjamin has not shown that the trial court had a ministerial duty to rule on his “motions” and he has not shown that he is entitled to mandamus relief. Accordingly, the petition for a writ of mandamus is denied.

¹ The petition contains a number of additional deficiencies. *See* Tex. R. App. P. 52.3 (describing the form and contents of a mandamus petition). Additionally, Benjamin, an inmate, did not pay the filing fee and failed to submit a declaration of inability to pay costs, an inmate’s account statement, or an affidavit relating to previous filings. *See* Tex. R. App. P. 20.1, *see also* Tex. Civ. Prac. & Rem. Code Ann. §§ 14.002(a), 14.004 (West 2017). Our denial of relief herein is not based on those deficiencies.

PETITION DENIED.

PER CURIAM

Submitted on November 1, 2017
Opinion Delivered November 2, 2017

Before Kreger, Horton, and Johnson, JJ.