



**COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH**

**NO. 02-17-00142-CV**

IN RE JOHN DAVID HARRIS

RELATOR

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ORIGINAL PROCEEDING  
TRIAL COURT NO. 179,878-C

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**MEMORANDUM OPINION<sup>1</sup>**

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Relator John David Harris seeks a writ of mandamus from this court, compelling the trial court to rule on: (1) his request for the trial court to enter a proposed final divorce decree and (2) his motion to dismiss. We will conditionally grant mandamus relief.

On November 1, 2013, John, while incarcerated, filed his petition for divorce from Real Party in Interest Christine Ann Harris. Service was effected on November 9, 2013. Christine did not file an answer to the divorce action in the

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<sup>1</sup>See Tex. R. App. P. 47.4, 52.8(d).

trial court.<sup>2</sup> On October 21, 2014, John submitted a proposed final divorce decree. On April 28, 2015, John sent a letter to the trial court requesting that it sign the final divorce decree.<sup>3</sup> To date, the trial court has refused to rule on John's request that it sign the final divorce decree.

The record also indicates that on October 21, 2016, John filed a motion to dismiss the divorce proceeding. At the time of filing, John asked that his motion to dismiss be presented to the trial court for a ruling. To date, the trial court has refused to rule on John's motion to dismiss.

Mandamus relief is proper to correct a clear abuse of discretion when there is no adequate remedy at law. *In re State*, 355 S.W.3d 611, 613 (Tex. 2011) (orig. proceeding). A trial court commits a clear abuse of discretion when it refuses to hear and rule upon a pending motion and a relator has no adequate remedy at law from such a refusal to rule; a court of appeals therefore may compel the trial court to rule on a pending motion. *In re Slaughter*, No. 02-13-00122-CV, 2013 WL 1960624, at \*2 (Tex. App.—Fort Worth May 14, 2013, orig. proceeding) (mem. op.); *Grant v. Wood*, 916 S.W.2d 42, 45 (Tex. App.—Houston [1st Dist.] 1995, orig. proceeding). The trial court's duty to act on a pending

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<sup>2</sup>After we requested a response to John's petition, Christine filed in our court an "Answer" that resembles the type of answer typically seen at the trial court level. We did not receive any response addressing the substantive merits of John's petition.

<sup>3</sup>The letter also stated that the matter was "ripe for finalization" and that John had filed certain information requested previously by the trial court.

motion arises when the movant has brought the motion to the trial court's attention and the court has had a reasonable time to rule. *Slaughter*, 2013 WL 1960624, at \*2; *In re Layton*, 257 S.W.3d 794, 795 (Tex. App.—Amarillo 2008, orig. proceeding).

Here, John submitted his proposed final divorce decree on October 21, 2014, and on April 28, 2015, John expressly requested that the trial court rule on it. While not styled a motion, John's request that the trial court sign the final divorce decree is a request for affirmative relief and, as such, should be construed as a motion. See *U.S. Fire Ins. Co. v. Millard*, 838 S.W.2d 935, 937 (Tex. App.—Houston [1st Dist.] 1992, no writ) ("We hold that any request for affirmative relief, whether it is entitled motion or request, is in fact a motion."). Because John's request that the trial court sign his final divorce decree has been pending for over two years and because that request has been brought to the trial court's attention, we hold that the trial court has abused its discretion by failing to timely rule on it.

We likewise hold that the trial court has abused its discretion by failing to timely rule on John's motion to dismiss the divorce proceeding. That motion was filed on October 21, 2016, and that same date John asked that the motion be presented to the trial court for a ruling.

John has no adequate remedy at law to correct the trial court's abuse of discretion in failing to rule. See *In re Gerstner*, No. 02-15-00315-CV, 2015 WL 6444797, at \*2 (Tex. App.—Fort Worth Oct. 23, 2015, orig. proceeding) (mem.

op.) (“Because Respondent refuses to rule on Relator’s application [for turnover relief], Relator has no adequate remedy at law.”); *O’Donniley v. Golden*, 860 S.W.2d 267, 270 (Tex. App.—Tyler 1993, orig. proceeding) (holding no adequate remedy at law available when trial court refused to rule on motion).

We therefore conditionally grant the writ of mandamus and direct the trial court to rule, whether favorably or unfavorably to John, on John’s request for the trial court to enter his proposed final divorce decree and his motion to dismiss. We are confident that the trial court will comply; only if it fails to promptly do so will the writ issue.

/s/ Sue Walker  
SUE WALKER  
JUSTICE

PANEL: WALKER, MEIER, and KERR, JJ.

DELIVERED: June 1, 2017