

NO. 07-10-00217-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL B
JUNE 24, 2010

In re LUIS S. LAGAITE, JR.,
Relator

***On Petition for Writ of
Mandamus***

Before QUINN, C.J., and CAMPBELL and HANCOCK, JJ.

Pending before the court is the application of Luis S. Lagaite, Jr., for a writ of mandamus. Though it is not clear what is sought, we interpret the petition as a request for us to order the Honorable Ana Estevez, 251st District Court, to try a lawsuit styled *Lagaite v. Boland*, No. 97-061-CV. We deny the petition for the following reasons.

First, the document fails to comport with the requirements of Texas Rule of Appellate Procedure 52.3(j). That is, Lagaite did not certify that he reviewed the petition and concluded that every factual allegation in it is supported by competent evidence.

Second, while the duty to act upon matters filed with it may be ministerial, the trial court has a reasonable time to do so. *In re Bates*, 65 S.W.3d 133, 134-35 (Tex. App.—Amarillo 2001, orig. proceeding). Whether such a period has been exceeded depends on various factors, as explained in *In re Bates*. Moreover, the burden lies with

Lagaite to prove that an unreasonable amount of time has lapsed by addressing those factors. *Id.* He has not attempted to do so here.

Accordingly, we deny the petition.

Per Curiam