

NO. 07-11-0138-CV  
IN THE COURT OF APPEALS  
FOR THE SEVENTH DISTRICT OF TEXAS  
AT AMARILLO  
PANEL D  
APRIL 18, 2011

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In re LUIS S. LAGAITE JR.,

Relator

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***Original Proceeding for Writ of Mandamus***

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

Pending before the trial court is the petition for writ of mandamus filed by Luis S. Lagaite, Jr. He asks us to order the Honorable Ana Estevez, Judge, 251<sup>st</sup> District Court, Potter County, to convene trial and enter a judgment in cause number 97,061-C pending in said court. Attached to the petition was an "Order Denying Plaintiff's Motion for Hearing and Motion for Trial" signed by the trial court on March 9, 2011. In it, the trial court observed that "...none of the defendants have been served in this case, and none have appeared." Moreover, Lagaite did not dispute this determination through the petition filed with us. Given this, we cannot grant him the relief sought for neither a trial can begin against defendants nor final judgment be entered against them if they have yet to be served with citation. It is a matter of due process.

Accordingly, the petition for writ of mandamus is denied.

Per Curiam