

NO. 07-11-0347-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL B
SEPTEMBER 1, 2011

In re WILLIAM M. WESTMORELAND,

Relator

Opinion on Petition for Writ of Mandamus

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

William M. Westmoreland petitions this court for a writ of mandamus directing the late Hon. Hal Miner, 47th Judicial District, Potter County, Texas, “to vacate his order of July 29, 2011” transferring venue of a suit. Apparently, the suit was initiated by Westmoreland against several of his “post-conviction counsels.” He allegedly sued them for legal malpractice, and now complains about the trial court’s decision to transfer venue of the proceeding. That decision was wrong, in his view, because the court purportedly failed to “allow forty-five (45) days notice pursuant to Rule 87(1), Tex. R. Civ. Proc.” We deny the petition for the following reason.

Assuming *arguendo* that a petition for writ of mandamus is the proper vehicle by which to review the trial court’s decision, we note that the dispute posed is fact specific. Yet, the record before us contains neither the motion to transfer venue nor any evidence indicating that date on which it was filed. See TEX R. APP. P. 52.3(k)(A) (requiring the

relator to include in an appendix any other document showing the matter complained of); TEX R. APP. P. 52.7(a)(1) (requiring the relator to file with the petition a certified or sworn copy of every document that is material to the relator's claims for relief and that was filed in the underlying proceeding). Thus, we cannot assess whether the trial court complied with the time periods specified in Rule 87(1) of the rules of civil procedure. Nor can we conclude that Westmoreland accurately certified, per Rule 52.3(j) of the appellate rules, that every factual statement in the petition was supported by competent evidence included in the appendix or record.

We finally note that the allegation concerning Judge Miner executing the order in question on July 29, 2011, is simply wrong. The Honorable Hal Miner passed away long before then.

The petition for writ of mandamus is denied.

Per Curiam