

NO. 12-17-00160-CV
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IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

IN RE: §
BUFORD TYRONE BLAYLOCK, § *ORIGINAL PROCEEDING*
RELATOR §

MEMORANDUM OPINION
PER CURIAM

Relator, Buford Tyrone Blaylock, has filed these original proceedings in which he challenges the trial court's orders directing the Texas Department of Criminal Justice to withdraw funds from Relator's inmate trust account and the trial court's refusal to rule on his motion to rescind the orders. We deny the petition.

To be entitled to mandamus relief, a relator must demonstrate that (1) the trial court clearly abused its discretion, and (2) the relator has no adequate remedy by appeal. *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 462 (Tex. 2008) (orig. proceeding). To the extent Relator challenges the trial court's orders to withdraw funds from his inmate trust account, "appellate review should be by appeal, as in analogous civil post-judgment enforcement actions." *Harrell v. State*, 286 S.W.3d 315, 321 (Tex. 2009). Accordingly, a complaint regarding the withdrawal of funds from an inmate's trust account is not an appropriate subject for mandamus relief.¹ *In re Hill*, No. 05-16-00911-CV, 2016 WL 4136560, at *1 (Tex. App.—Dallas Aug. 3, 2016, orig. proceeding) (mem. op.).

¹ Relator previously attempted to appeal the trial court's inaction on his motions to rescind, but those appeals did not challenge the orders themselves. See *Blaylock v. State*, Nos. 12-16-00240-CV, 12-16-00241-CV, 2017 WL 411380 (Tex. App.—Tyler Jan. 31, 2017, no pet.) (mem. op.). Thus, we dismissed the appeals for want of jurisdiction. See *id.*

Regarding the trial court's failure to rule on Relator's motion to rescind the orders, to obtain a writ of mandamus compelling a trial court to consider and rule on a motion, the relator must show that the trial court (1) had a legal duty to perform a nondiscretionary act, (2) was asked to perform the act, and (3) failed or refused to do so. *In re Molina*, 94 S.W.3d 885, 886 (Tex. App.–San Antonio 2003, orig. proceeding). Generally, a trial court has a nondiscretionary duty to consider and rule on a motion within a reasonable time. *In re Thomas*, No. 12–05–00261–CV, 2005 WL 2155244, at *1 (Tex. App.–Tyler Sept. 7, 2005, orig. proceeding) (mem. op.). However, a trial court cannot be expected to consider a motion not called to its attention. See *In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.–Amarillo 2001, orig. proceeding). It is incumbent upon the relator to establish that the motion has been called to the trial court's attention. See *id.*

Relator contends that he filed his motion on June 20, 2016, and filed objections to the trial court's refusal to rule on March 22, 2017. The record does not contain either the motion or the objections. The mere statement that a document was filed is insufficient to reasonably infer that the trial court had notice of the filed document and of the need to act on it. *Id.* The record does not indicate that, in this case, the trial court was afforded or had notice of Relator's motion or objections. See *id.* Consequently, Relator has not established that mandamus relief is available for the trial court's failure to rule on his motion to rescind the order to withdraw funds from his inmate trust account. Accordingly, we *deny* his petition for writ of mandamus.

Opinion delivered May 31, 2017.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

MAY 31, 2017

NO. 12-17-00160-CV

BUFORD TYRONE BLAYLOCK,
Relator
V.

HON. CARTER W. TARRANCE,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by Buford Tyrone Blaylock; who is the relator in Cause No. B-15,746, pending on the docket of the 392nd Judicial District Court of Henderson County, Texas. Said petition for writ of mandamus having been filed herein on May 24, 2017, and the same having been duly considered, because it is the opinion of this Court that the writ should not issue, it is therefore **CONSIDERED, ADJUDGED** and **ORDERED** that the said petition for writ of mandamus be, and the same is, hereby **denied**.

By *per curiam* opinion.
Panel consisted of Worthen, C.J., Hoyle, J. and Neeley, J.



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

MAY 31, 2017

NO. 12-17-00161-CV

BUFORD TYRONE BLAYLOCK,
Relator
V.

HON. CARTER W. TARRANCE,
Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by Buford Tyrone Blaylock; who is the relator in Cause No. B-15,747, pending on the docket of the 392nd Judicial District Court of Henderson County, Texas. Said petition for writ of mandamus having been filed herein on May 24, 2017, and the same having been duly considered, because it is the opinion of this Court that the writ should not issue, it is therefore **CONSIDERED, ADJUDGED** and **ORDERED** that the said petition for writ of mandamus be, and the same is, hereby **denied**.

By *per curiam* opinion.
Panel consisted of Worthen, C.J., Hoyle, J. and Neeley, J.