

Denied and Opinion Filed May 22, 2017



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00495-CV

IN RE BILLY PAUL BOLT, Relator

Original Proceeding from the 416th Judicial District Court
Collin County, Texas
Trial Court Cause No. 416-51330-2009

MEMORANDUM OPINION

Before Justices Bridges, Fillmore, and Schenck
Opinion by Justice Bridges

Before the Court is relator's May 11, 2017 petition for writ of mandamus in which he complains of the trial court's failure to reform a divorce decree to include an oral pronouncement the trial court purportedly made to abate all child support payments during relator's incarceration.

Mandamus relief is appropriate only if the court clearly abused its discretion and the relator has no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). Mandamus is appropriate to compel the performance of a ministerial duty. *In re Bridges*, 28 S.W.3d 191, 194 (Tex. App.—Fort Worth 2000, orig. proceeding). A trial judge must consider and rule on a motion brought to the court's attention within a reasonable amount of time, and a writ of mandamus may be issued to compel the trial court to rule in such instances. *See State ex rel. Young v. Sixth Judicial Dist. Court of Appeals*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding); *In re Craig*, 426 S.W.3d 106,

107 (Tex. App.—Houston [1st Dist.] 2012, orig. proceeding); *In re Sarkissian*, 243 S.W.3d 860, 861 (Tex. App.—Waco 2008, orig. proceeding). To be properly filed and timely presented, a motion must be presented to a trial court at a time when the court has authority to act on the motion. *See In re Hogg–Bey*, No. 05–15–01421–CV, 2015 WL 9591997, at * 2 (Tex. App.—Dallas Dec. 30, 2015, orig. proceeding) (mem. op., not designated for publication). The mere filing of a motion with a trial court clerk does not equate to a request that the trial court rule on the motion. *Sarkissian*, 243 S.W.3d at 861. The relator has the burden of providing a record establishing that his motion has awaited disposition for an unreasonable time. *In re Mendoza*, 131 S.W.3d 167, 168 (Tex. App.—San Antonio 2004, orig. proceeding); TEX. R. APP. P. 52.7(a) (“Relator must file with the petition [] a certified or sworn copy of every document that is material to the relator's claim for relief and that was filed in any underlying proceeding....”).

Here, the record does not show that relator has filed a motion or asked the trial court to act. The appendix to the petition includes a “notice of intent” purportedly sent to the trial court on January 4, 2017 asking the court to correct the divorce decree to reflect the oral pronouncement. The notice is not file-stamped and is not certified, however, and the record includes no evidence that the notice was filed with the trial court or that relator brought the request to the court’s attention and asked for a ruling. Based on the record before us, we conclude relator has not shown he is entitled to the relief requested. Accordingly, we deny relator’s petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/David L. Bridges/

DAVID L. BRIDGES
JUSTICE