

CONDITIONALLY GRANT in part, DENY in part; Opinion Filed September 25, 2017.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-17-00919-CV

IN RE RONROYAL J. OWENS, Relator

**Original Proceeding from the 191st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC07-04346**

MEMORANDUM OPINION

Before Justices Lang, Myers, and Boatright
Opinion by Justice Boatright

In this original proceeding, relator seeks a writ ordering the trial court to rule on relator's October 15, 2012 motion to re-open case. By order dated August 31, 2017, we requested that the real party in interest and respondent file their responses, if any, to relator's petition for writ of mandamus by September 15, 2017. No responses were filed. We conditionally grant relief.

Availability of Mandamus Relief

“When a motion is properly filed and pending before a trial court, the act of giving consideration to and ruling upon that motion is a ministerial act,’ and mandamus may issue to compel the trial judge to act.” *Safety-Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex. App.—San Antonio 1997, orig. proceeding). To obtain mandamus relief for the trial court's refusal to rule on a motion, a relator must establish: (1) the motion was properly filed and has been pending for a reasonable time; (2) the relator requested a ruling on the motion; and (3) the trial court refused to rule. *In re Buholtz*, No. 05-16-01312-CV, 2017 WL 462361, at *1 (Tex. App.—

Dallas Jan. 31, 2017, orig. proceeding); *Crouch v. Shields*, 385 S.W.2d 580, 582 (Tex. App.—Dallas 1964, writ ref'd n.r.e.). 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 *1-2 (Tex. App.—Dallas Dec. 30, 2015, orig. proceeding) (mem. op., not designated for publication). It is relator's burden to provide the court with a record sufficient to establish his right to relief. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex.1992); TEX. R. APP. P. 52.3(k), 52.7(a).

Applicable Law

A trial court is required to consider and rule upon a motion within a reasonable time. *Safety-Kleen Corp.*, 945 S.W.2d at 269. No litigant is entitled to a hearing at whatever time he may choose, however. *In re Chavez*, 62 S.W.3d 225, 229 (Tex. App.—Amarillo 2001, orig. proceeding). A trial court has a reasonable time within which to consider a motion and to rule. *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). “Whether a reasonable time for the trial court to act has lapsed is dependent upon the circumstances of each case and no bright line separates a reasonable time period from an unreasonable one.” *In re Shapira*, No. 05-16-00184-CV, 2016 WL 1756754, at *1 (Tex. App.—Dallas Apr. 29, 2016, orig. proceeding). Among the criteria included are the trial court's actual knowledge of the motion, its overt refusal to act, the state of the court's docket, and the existence of other judicial and administrative matters which must be addressed first. *Id.*; *In re First Mercury Ins. Co.*, No. 13-13-00469-CV, 2013 WL 6056665, at *3 (Tex. App.—Corpus Christi Nov. 13, 2013, orig. proceeding).

Analysis

Relator filed his motion to re-open case on October 15, 2012. Relator filed a letter on December 6, 2012 asking the trial court to rule on the motion. The motion to re-open case was properly-filed and presented to the trial court at a time when the trial court could act on the motion. The motion has been pending for nearly five years without ruling. The trial court has had more than a reasonable time to rule, and relator has done what is required to obtain a ruling on the motion. Under these circumstances, we conclude mandamus relief is appropriate to direct the trial court to rule on the motion. *See Kissam v. Williamson*, 545 S.W.2d 265, 267 (Tex. Civ. App.—Tyler 1976, orig. proceeding) (thirteen-month delay unreasonable).

Relator also asks the Court to order the trial court to re-open the case and set it for trial. We deny that request because, while we have jurisdiction to direct the trial court to exercise its discretion, we are not permitted to tell the trial court how to rule on the motion. *Greenberg, Benson, Fisk and Fielder, P.C. v. Howell*, 685 S.W.2d 694, 694–95 (Tex. App.—Dallas, 1984, orig. proceeding).

Accordingly, we conditionally grant the writ of mandamus in part. We direct the trial court to make written rulings within fifteen (15) days of the date of this opinion on relator's October 15, 2012 motion to re-open case. A writ will issue only if the trial court fails to comply with this opinion and the order of this date.

/Jason Boatright/

JASON BOATRIGHT
JUSTICE