

Denied; and Opinion Filed May 15, 2015



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

No. 05-15-00622-CV

IN RE PROGRESSIVE COUNTY MUTUAL INSURANCE COMPANY, Relator

**Original Proceeding from the 101st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-13-06233**

MEMORANDUM OPINION

**Before Justices Lang, Fillmore, and Brown
Opinion by Justice Lang**

Relator filed this petition for writ of mandamus complaining that the trial court has not ruled on its motion to allow the late designation of a medical expert. Relator requests that the Court order the trial court to allow it to designate its expert witness and to allow any related discovery necessary to fairly allow the parties to prepare for trial. Relator further requests that the Court order the trial judge to continue the date of trial to a time that will accommodate its expert designation and related discovery.

The mandamus record demonstrates that the trial court conducted a hearing on the motion on April 13, 2015, but has not yet advised the parties of its ruling on the motion. Thus, at this juncture, there is no ruling of the trial court that we may evaluate for abuse of discretion and adequacy of appellate remedy. The case is set for trial on May 18, 2015. The mandamus record does not demonstrate that the trial court does not intend to rule on this matter before trial commences.

Because the trial court has not yet ruled, the relief relator requests in its petition is not consistent with relator's complaint that the trial court has abused its discretion in failing to rule. While the Court may, by mandamus, direct the trial court to make a decision, we may not tell the trial court what that decision should be. *Crofts v. Court of Civil Appeals*, 362 S.W.2d 101, 104 (Tex. 1962); *State ex rel. Hill v. Court of Appeals for Fifth Dist.*, 34 S.W.3d 924, 927 n.3 (Tex. Crim. App. 2001); *In re Tasby*, 40 S.W.3d 190, 191 (Tex. App.—Texarkana 2001, orig. proceeding); *O'Donniley v. Golden*, 860 S.W.2d 267, 269–70 (Tex. App.—Tyler 1993, orig. proceeding). Because the relief the relator seeks is not consistent with a complaint that the trial court has failed to rule, relator has failed to establish a right to the relief requested.

We deny the petition. TEX. R. APP. P. 52.8.

/Douglas S. Lang/
DOUGLAS S. LANG
JUSTICE

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