

DENIED and Opinion Filed July 24, 2024



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

No. 05-24-00867-CV

**IN RE AUTO CLUB COUNTY MUTUAL INSURANCE COMPANY &
BRITTANY BURKS, Relators**

**Original Proceeding from the County Court at Law No. 3
Dallas County, Texas
Trial Court Cause No. CC-18-05739-C**

MEMORANDUM OPINION

Before Justices Partida-Kipness, Nowell, and Miskel
Opinion by Justice Partida-Kipness

Before the Court are relators' July 22, 2024 petition for writ of mandamus and July 23, 2024 emergency motion for temporary relief. In their petition, relators challenge the trial court's September 21, 2023 order denying their motion to sever and abate. In their emergency motion, relators seek to stay all trial court proceedings, including the trial specially set for July 29, 2024, pending our action on the petition.

A relator who delays seeking mandamus relief, even a delay of only a few months, may waive the right to mandamus unless the relator can justify the delay. *In re Barnes*, No. 05-22-00312-CV, 2022 WL 1955754, at *1 (Tex. App.—Dallas June 3, 2022, orig. proceeding) (mem. op.). Based on the petition and the record

before us, relators waited until the eve of trial and over ten months from the challenged ruling before seeking mandamus relief. Relators offered no explanation for the delay, thereby waiving any entitlement to mandamus relief.

Accordingly, we deny the petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a). Having denied relators' petition, we also deny relators' emergency motion as moot.

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/Robbie Partida-Kipness/
ROBBIE PARTIDA-KIPNESS
JUSTICE