

Opinion issued June 30, 2020



In The
Court of Appeals
For The
First District of Texas

NO. 01-19-00939-CV

IN RE LAKEITH RAQIB AMIR-SHARIF, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Lakeith Raqib Amir-Sharif, has filed a petition for writ of mandamus, seeking to compel the trial court to hold a hearing, or otherwise rule, on four motions filed by the parties.¹

¹ The motions at issue are: (1) relator's Motion for Rehearing and Reconsideration for Contempt of Court Orders; (2) relator's Motion to Compel Production of All December 13, 2018 Court Ordered Documents; (3) real party in interest's Timely Objection to the Assignment of Judge Denman as a Visiting Judge and relator's Response; and (4) Relator's Motion for Referral Order of the Case for Alternative Dispute Resolution.

We deny relator's petition for writ of mandamus.²

Mandamus is an extraordinary remedy that is only available in limited circumstances. *See Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). To be entitled to mandamus relief, the relator must show both that the trial court abused its discretion and that there is no adequate remedy by appeal. *See In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding).

Relator alleges in his petition for writ of mandamus that the trial court abused its discretion by failing to perform its ministerial duty to conduct a hearing, or otherwise rule, on the motions at issue here. An act is ministerial in nature when it can be accomplished without the exercise of judgment or discretion. *See Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991). When a motion has been properly filed and brought to the attention of the trial court, the act of considering and ruling upon the motion is ministerial in nature, and mandamus may issue to compel the trial court to act. *See In re Layton*, 257 S.W.3d 794, 795 (Tex. App.—Amarillo 2008, orig. proceeding).

² The underlying case is *Lakeith Raqib Amir-Sharif v. Angela D. Allen, Frankie L. Reescano, and Rick C. Thale*, Cause No. 67247-I, in the 412th District Court of Brazoria County, Texas, the Honorable Justin R. Gilbert presiding.

The burden to establish that a motion was properly filed and brought to the attention of the trial court lies with the relator.³ See *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding) (relator must “illustrate that the district court received and was aware of” pleadings at issue); see also *In re Johnson*, 07-13-00259-CV, 2014 WL 1285661, at *1 (Tex. App.—Amarillo Mar. 28, 2014, orig. proceeding) (mem. op.) (relator’s burden to “bring forward all that is necessary to establish a claim for relief”).

Nothing in the mandamus record in this case suggests that motions at issue in relator’s petition for writ of mandamus were filed or otherwise brought to the attention of the trial court. Thus, while the act relator seeks to compel in this case, holding a hearing and/or otherwise considering motions, is ministerial in nature, he is not entitled to mandamus relief. See *In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding) (“And, because the state of the record prevents us from holding that the trial court was aware of the motion, we cannot say that the court abused its discretion in allegedly failing to act on same.”); see also *In*

³ Additionally, the Texas Rules of Appellate Procedure require a petition for writ of mandamus to be accompanied by an appendix including “a certified or sworn copy of any order complained of, or any other document showing the matter complained of.” See TEX. R. APP. P. 52.3(k)(1)(A); see also TEX. R. APP. P. 52.7(a)(1) (“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.”).

re Johnson, 2014 WL 1285661, at *1 (“Absent a sufficient record, mandamus will not issue.”).

We deny relator’s petition for writ of mandamus. All pending motions are dismissed as moot.

PER CURIAM

Panel consists of Justices Keyes, Kelly, and Landau