

COURT OF APPEALS FOR THE NINTH DISTRICT OF TEXAS AT BEAUMONT

In re Dwight McDuffie

No. 09-09-00561-CV · No. No. 09-09-00561-CV · Decided December 31, 2009

SUMMARY

The Ninth District Court of Appeals of Texas denied Dwight McDuffie's petition for writ of mandamus seeking to compel the trial court to rule on his motion for summary judgment. The court held that McDuffie failed to show that he had brought the motion to the trial court's attention and requested a hearing and ruling.

CASE DETAILS

COURT	Court of Appeals for the Ninth District of Texas at Beaumont
WRITING FOR THE COURT	Per Curiam; McKeithen, C.J.; Gaultney, J.; Horton, J.
JURISDICTION	Texas
DECIDED	December 31, 2009
DOCKET	No. 09-09-00561-CV
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original proceeding on a petition for writ of mandamus seeking to compel the trial court to rule on McDuffie's motion for summary judgment.
STANDARD OF REVIEW	Mandamus relief requires the relator to establish that the trial court failed or refused to rule on a properly presented pending motion; a trial court must rule within a reasonable time under the circumstances.
PRECEDENTIAL VALUE	Published memorandum opinion
PARTIES	Dwight McDuffie

TOPICS

- appellate procedure
- civil procedure
- summary judgment
- standard of review

PRACTICE AREAS

- Civil procedure
- Appellate procedure
- Mandamus

QUESTIONS PRESENTED

1. Whether McDuffie established entitlement to mandamus relief compelling the trial court to rule on his motion for summary judgment.
2. Whether filing a motion with the district clerk, without proof that the motion was brought to the trial court's attention and presented with a request for a ruling, is sufficient to establish that the trial court refused to rule.

HOLDINGS

1. A relator seeking to compel a ruling must show that, after filing the motion, he asked the trial court for a hearing and ruling and that the trial court refused to act; filing the motion with the clerk alone is insufficient.
2. A trial court is required to consider and rule on a motion within a reasonable time, with reasonableness determined by the circumstances of the case.

KEY QUOTATIONS

“Showing that a motion was filed with the court clerk does not constitute proof that the motion was brought to the trial court's attention or presented to the trial court with a request for a ruling.”

“To establish that the trial court refused to rule on a pending motion, the relator must provide a record that shows that, after he filed his motion, relator asked the trial court for a hearing and a ruling on his motion and the trial court refused to hold a hearing and to rule.”

FACTUAL BACKGROUND

McDuffie asserted that citations had issued in the underlying case and that the defendants had not answered. He filed a motion for summary judgment but provided no evidence, apart from the filing itself, that he had presented the motion to the trial court or requested a hearing and ruling. The record also indicated that service had not been completed on at least one defendant.

PROCEDURAL HISTORY

McDuffie filed a motion for summary judgment and later sought mandamus relief because the trial court had not ruled on it. The court of appeals concluded that McDuffie failed to show that he brought the motion to the trial court's attention or requested a hearing and ruling, and denied the petition.

DISPOSITION

writ_denied

CASES CITED

- In re Kleven, 100 S.W.3d 643, 644 (Tex. App.--Texarkana 2003, orig. proceeding)
- In re Blakeney, 254 S.W.3d 659, 662 (Tex. App.--Texarkana 2008, orig. proceeding)
- Barnes v. State, 832 S.W.2d 424, 426 (Tex. App.--Houston [1st Dist.] 1992, orig. proceeding)

OPINION

PER CURIAM.

In The Court of Appeals Ninth District of Texas at Beaumont _____ NO. 09-09-00561-CV _____ IN RE DWIGHT MCDUFFIE Original Proceeding
MEMORANDUM OPINION Dwight McDuffie filed a petition for writ of mandamus in which he seeks to compel the trial court to rule on his "Motion for Summary Judgment." According to McDuffie, the clerk issued citations in the case on August 6, 2009, and the defendants have not filed an answer.

McDuffie complains that the trial court has not ruled on his motion. McDuffie attaches copies of two letters to his mandamus petition. A letter dated October 15, 2009, from the district clerk to McDuffie, informs him that the clerk had not yet received a return of service on one of the defendants for whom citation has issued. A transmittal letter dated October 21, 2009, asks the district clerk to notify McDuffie of the date the motion is filed, but does not include a request to present the motion to the trial court for a ruling.

"A trial court is required to consider and rule on a motion within a reasonable time." In re Kleven, 100 S.W.3d 643, 644 (Tex. App.--Texarkana 2003, orig. proceeding). What is considered a reasonable amount of time depends on the circumstances of each case.

In re Blakeney, 254 S.W.3d 659, 662 (Tex. App.--Texarkana 2008, orig. proceeding). "Showing that a motion was filed with the court clerk does not constitute proof that the motion was brought to the trial court's attention or presented to the trial court with a request for a ruling." Id. To establish that the trial court refused to rule on a pending motion, the relator must provide a record that shows that, after he filed his motion, relator asked the trial court for a hearing and a ruling on his motion and the trial court refused to hold a hearing and to rule.

Barnes v. State, 832 S.W.2d 424, 426 (Tex. App.--Houston [1st Dist.] 1992, orig. proceeding). Other than the filing of the motion itself, McDuffie describes none of his efforts to obtain a ruling from the trial court. From this record, it appears that McDuffie did not alert the trial court that a motion had been filed and that McDuffie was requesting a ruling on that motion.

McDuffie has not shown that he is entitled to mandamus relief. Accordingly, we deny the petition for writ of mandamus. PETITION DENIED. PER CURIAM Opinion Delivered December 31, 2009 Before McKeithen, C.J., Gaultney and Horton, JJ.