

**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.

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.