

FOURTH COURT OF APPEALS OF TEXAS, SAN ANTONIO

In re Joe Anthony Espinoza

No. 04-19-00838-CV · No. 04-19-00838-CV · Decided January 8, 2020

SUMMARY

The Fourth Court of Appeals of Texas conditionally granted Joe Anthony Espinoza’s petition for writ of mandamus after the trial court failed for more than ten months to rule on his motion to dismiss for lack of jurisdiction. The court directed that the writ issue only if the trial court failed to rule on the motion within fourteen days, while emphasizing that mandamus could compel a ruling but not dictate its substance.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas, San Antonio
WRITING FOR THE COURT	Patricia O. Alvarez; Rebeca C. Martinez; Irene Rios
JURISDICTION	Texas
DECIDED	January 8, 2020
DOCKET	04-19-00838-CV
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original mandamus proceeding arising from the trial court's refusal to rule on relator's motion to dismiss for lack of jurisdiction.
STANDARD OF REVIEW	Mandamus is available to compel a trial court to perform the ministerial act of considering and ruling on a properly filed pending motion within a reasonable time, but an appellate court may direct the trial court to proceed to judgment without directing what judgment to enter.
PRECEDENTIAL VALUE	Published memorandum opinion; mandamus ruling concerning the duty to rule on a pending motion within a reasonable time.
PARTIES	Joe Anthony Espinoza, relator v. Mie Doak, real party in interest

TOPICS

appellate procedure

civil procedure

remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court's failure to rule on Espinoza's pending motion to dismiss within more than ten months warranted mandamus relief.
2. Whether the Court of Appeals could compel the trial court to rule without directing the substance of the ruling.

HOLDINGS

1. A trial court must consider and rule on a properly filed pending motion within a reasonable time, and the trial court's failure to rule on Espinoza's motion to dismiss for more than ten months constituted error warranting mandamus relief.
2. An appellate court may direct a trial court to proceed to judgment on a pending motion, but may not direct the trial court what judgment to enter.

KEY QUOTATIONS

“A trial court is required to consider and rule on a motion within a reasonable time.” (-2)

“When a motion is properly filed and pending before a trial court, the act of giving consideration to and ruling upon that motion is a ministerial act,” and mandamus may issue to compel the trial judge to act.” (-2)

FACTUAL BACKGROUND

Espinoza filed a motion to dismiss for lack of jurisdiction in the underlying child-related proceeding. After conducting a hearing on March 25, 2019, the trial court failed to issue a ruling for more than ten months while continuing to rule on other matters. Mie Doak stated that she had no objection to Espinoza obtaining a trial-court ruling on the standing issue.

PROCEDURAL HISTORY

Espinoza filed a motion to dismiss in the underlying proceeding in February 2019. The trial court held a hearing on March 25, 2019, but did not rule on the motion for more than ten months despite continuing to issue other rulings. Espinoza filed a petition for writ of mandamus on December 2, 2019. The Court of Appeals conditionally granted mandamus and directed the trial court to rule on the motion within fourteen days.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The writ will issue only if the trial court fails to rule on relator's motion to dismiss within fourteen days of the opinion.

CASES CITED

- Safety-Kleen Corp. v. Garcia, 945 S.W.2d 268, 269 (Tex. App.—San Antonio 1997, orig. proceeding)
- Crofts v. Court of Civil Appeals, 362 S.W.2d 101, 105 (Tex. 1962) (orig. proceeding)

OPINION

in Re Joe Anthony Espinoza

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00838-CV IN RE Joe Anthony ESPINOZA Original Mandamus Proceeding 1 Opinion
by: Patricia O. Alvarez, Justice Sitting: Rebeca C. Martinez, Justice Patricia O. Alvarez, Justice Irene Rios, Justice Delivered and Filed: January 8, 2020

PETITION FOR WRIT OF MANDAMUS CONDITIONALLY GRANTED

On December 2, 2019, relator filed a petition for writ of mandamus complaining of the trial court's refusal to rule on his "Motion to Dismiss for Lack of Jurisdiction." Real party in interest, Mie Doak, filed a response to the petition in which she stated "no objection to . . . [relator] asking for a Trial Court ruling on the issue of standing." We conditionally grant the petition for writ of mandamus.

DISCUSSION

Relator filed a motion to dismiss in February 2019. The trial court conducted a hearing on the motion on March 25, 2019. Since that date, the trial court has refused to issue a ruling on relator's motion although the court continues to issue other rulings in the underlying case. 1 This proceeding arises out of Cause No. 1915-C, styled In the Interest of J.A.E., Jr., a Child, pending in the County Court at Law, Kerr County, Texas, the Honorable Susan Harris presiding. 04-19-00838-CV "A trial court is required to consider and rule on a motion within a reasonable time." Safety- Kleen Corp. v. Garcia, 945 S.W.2d 268, 269 (Tex. App.—San Antonio 1997, orig. proceeding). "'When a motion is properly filed and pending before a trial court, the act of giving consideration to and ruling upon that motion is a ministerial act,' and mandamus may issue to compel the trial judge to act." Id. (citation omitted). However, while we have jurisdiction to direct the trial court to proceed to judgment, we may not tell the court what judgment it should enter. Crofts v. Court of Civil Appeals, 362 S.W.2d 101, 105 (Tex. 1962) (orig. proceeding). Relator's motion to dismiss has been pending for over ten months. Because the trial court has erred by not ruling on relator's motion within a reasonable time, we conditionally grant relator's petition for writ of mandamus. The writ will issue only if the trial court fails to rule on relator's motion to dismiss within fourteen days of this opinion. Patricia O. Alvarez, Justice -2-