

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

In re Carlos I. Uresti, Relator

No. 04-11-00196-CV (Tex. App.—San Antonio Mar. 23, 2011) · No. No. 04-11-00196-CV · Decided March 23, 2011

SUMMARY

The Texas Fourth Court of Appeals denied without prejudice Carlos I. Uresti’s petition for writ of mandamus and request for emergency relief. The court held that the petition failed to comply with multiple Texas Rule of Appellate Procedure 52 requirements, including the requirements concerning argument, supporting documents, the record, and separate emergency-relief motions.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                    |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of Texas, Fourth District, San Antonio                                                                                                                                                                                            |
| WRITING FOR THE COURT | Per curiam; Sandee Bryan Marion; Steven C. Hilbig; Marialyn Barnard                                                                                                                                                                                |
| JURISDICTION          | Texas                                                                                                                                                                                                                                              |
| DECIDED               | March 23, 2011                                                                                                                                                                                                                                     |
| DOCKET                | No. 04-11-00196-CV                                                                                                                                                                                                                                 |
| DISPOSITION           | writ_denied                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | Original mandamus proceeding challenging the denial of a motion for legislative continuance and seeking emergency relief.                                                                                                                          |
| STANDARD OF REVIEW    | Mandamus relief requires the relator to show that the trial court abused its discretion and that the relator lacks an adequate remedy by appeal; the court could not determine abuse of discretion because the petition and record were deficient. |
| PRECEDENTIAL VALUE    | Memorandum opinion; precedential status is not stated in the opinion text.                                                                                                                                                                         |
| PARTIES               | Carlos I. Uresti, Relator                                                                                                                                                                                                                          |

TOPICS

- writ of certiorari
- appellate procedure
- family law procedure
- civil procedure

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the petition for writ of mandamus satisfied the Texas Rules of Appellate Procedure.
2. Whether the court could determine that the trial court abused its discretion in denying the motion for legislative continuance.
3. Whether relator was entitled to emergency relief.

## HOLDINGS

1. The petition did not satisfy the requirements of Texas Rule of Appellate Procedure 52, including the requirements for the petition's contents, a clear and concise abuse-of-discretion argument, and the required appendix or record.
2. The court could not determine whether the trial court abused its discretion in denying the motion for legislative continuance because of the deficiencies in the mandamus petition and supporting record.
3. Emergency relief was denied because the request was not filed in a separate motion as required by Rule 52.10, and the underlying mandamus petition was procedurally deficient.

## KEY QUOTATIONS

*“Due to the deficiencies in the petition for writ of mandamus filed in this court, we are unable to determine whether the trial court abused its discretion in denying the motion for legislative continuance.” (2)*

*“Accordingly, the petition for writ of mandamus and any emergency relief sought are DENIED WITHOUT PREJUDICE.” (2)*

## FACTUAL BACKGROUND

Carlos I. Uresti sought a legislative continuance in an underlying family-law proceeding. After the trial court denied the motion, he filed a petition for writ of mandamus and a request for emergency relief. The petition omitted required information, lacked a clear and concise argument that the trial court abused its discretion, failed to include material documents and a record, and did not present the emergency request in a separate motion.

## PROCEDURAL HISTORY

Relator filed a petition for writ of mandamus and a request for emergency relief in the court of appeals after a trial court denied his motion for legislative continuance. The court of appeals denied both requests without prejudice because the petition failed to comply with multiple Texas Rules of Appellate Procedure requirements and lacked the necessary record to determine whether the trial court abused its discretion.

## DISPOSITION

writ\_denied

## OPINION

### PER CURIAM.

MEMORANDUM OPINION No. 04-11-00196-CV IN RE Carlos I. URESTI Original Proceeding 1 PER CURIAM Sitting: Sandee Bryan Marion, Justice Steven C. Hilbig, Justice Marialyn Barnard, Justice Delivered and Filed: March 23, 2011 PETITION FOR WRIT OF MANDAMUS DENIED On March 16, 2011, relator filed a petition for writ of mandamus and a request for emergency relief, complaining of the trial court's denial of a motion for legislative continuance.

However, relator's petition does not satisfy the requirements of the Texas Rules of Appellate Procedure. See TEX. R. APP. P. 52. Relator's petition fails to comply with numerous requirements outlined in 52.3(a)-(k). See TEX. R. APP. P. 52.3 ("[t]he petition must, under appropriate headings and in the order here indicated, contain" all of the items listed in 52.3 (a)- (k)).

Furthermore, relator fails to include a clear and concise argument as to why the trial court abused its discretion in denying the motion for legislative continuance. TEX. R. APP. P. 52.3(h). 1 This proceeding arises out of Cause No. 2011-CI-00491, styled In the Matter of the Marriage of Angelica Maria Macias and Joe Richard Macias, Jr., pending in the 224th Judicial District Court, Bexar County, Texas, the Honorable Cathy Stryker presiding.

However, the ruling complained of was made by the Honorable David A. Berchelmann, presiding judge of the 37th Judicial District Court, Bexar County, Texas. 04-11-00196-CV In addition, relator has failed to include an appendix or record that contains the motion for legislative continuance filed in the trial court and any other document necessary to obtain the relief sought in this court.

See TEX. R. APP. P. 52.3 (k) & 52.7(a) ("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").

Finally, any motion for emergency relief must be filed in a separate motion from the petition in accordance with Rule 52.10. See TEX. R. APP. P. 52.10. Due to the deficiencies in the petition for writ of mandamus filed in this court, we are unable to determine whether the trial court abused its discretion in denying the motion for legislative continuance.

Accordingly, the petition for writ of mandamus and any emergency relief sought are DENIED WITHOUT PREJUDICE. TEX. R. APP. P. 52.8(a). PER CURIAM -2-