

DENY and Opinion Filed June 29, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-20-00564-CV

**IN RE WEBBER, LLC, WEBBER BARRIER SERVICES, LLC AND
GUSTAVO RENE LOPEZ, Relators**

**Original Proceeding from the 101st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-17-16837**

MEMORANDUM OPINION

**Before Chief Justice Burns, Justice Bridges, and Justice Reichek
Opinion by Justice Bridges**

In this original proceeding, relators challenge the trial court's January 7, 2020 order denying their request for an independent medical examination. A writ of mandamus issues to correct a clear abuse of discretion when no adequate remedy by appeal exists. *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding). “Although mandamus is not an equitable remedy, its issuance is largely controlled by equitable principles.” *Rivercenter Assocs. v. Rivera*, 858 S.W.2d 366, 367 (Tex. 1993) (orig. proceeding). One of these principles is that “equity aids the diligent and not those who slumber on their rights.” *Id.* (internal brackets and quotation marks omitted).

An unexplained delay of four months or more can constitute laches and result in denial of mandamus relief. *See Rivera*, 858 S.W.2d at 366 (unexplained delay of more than four months); *Int'l Awards, Inc. v. Medina*, 900 S.W.2d 934, 935–36 (Tex. App.—Amarillo 1995, orig. proceeding) (unexplained delay of more than four months and waited until eve of trial); *Furr's Supermarkets, Inc. v. Mulanax*, 897 S.W.2d 442, 443 (Tex. App.—El Paso 1995, no writ) (unexplained four-month delay in challenging discovery order); *Bailey v. Baker*, 696 S.W.2d 255, 256 (Tex. App.—Houston [14th Dist.] 1985, orig. proceeding) (unexplained four-month delay and filed two weeks before trial).

Here, relators did not file the petition for writ of mandamus until May 29, 2020—more than four and a half months from the challenged order. We conclude that relators' unexplained delay bars their right to mandamus relief. Accordingly, we deny the petition for writ of mandamus. Having denied mandamus relief, we also deny relators' June 3, 2020 motion for temporary relief and stay as moot.

/David L. Bridges/

DAVID L. BRIDGES
JUSTICE

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