

ARKANSAS SUPREME COURT

No. 08-1287

ALFONZO HENDRIX
Petitioner

v.

RUSSELL ROGERS, CIRCUIT JUDGE
Respondent

Opinion Delivered February 12, 2009

PRO SE PETITION FOR WRIT OF
MANDAMUS [CIRCUIT COURT OF
NEVADA COUNTY, CV 2006-67]

PETITION DENIED.

PER CURIAM

In 2006, petitioner Alfonzo Hendrix filed a civil complaint in Nevada County Circuit Court, which was dismissed by order entered August 20, 2008. Petitioner timely filed a notice of appeal, but failed to perfect his appeal by lodging the record within the required time.¹ Petitioner asserts that Honorable Russell Rogers, Circuit Judge, “has failed to rule upon the notice of appeal motion within the 30 day limit” and brings this pro se motion for writ of mandamus to compel Judge Rogers to provide a ruling.

There is no motion contained within the partial record before us. A notice of appeal, unless coupled with some other pleading, such as a motion for extension of time to lodge the record, does not request or require any action by the circuit court. The notice filed by petitioner that is contained in the record does not purport to do more than provide notice.

¹ The time limit set in Arkansas Rule of Appellate Procedure--Civil 5(a), as applied through Arkansas Rule of Appellate Procedure--Criminal 4(a), requires that the record must be tendered to this court within ninety days of the date of the notice of appeal, unless the circuit court granted an extension of time. While the petition for writ of mandamus was pending, petitioner tendered the record on the ninety-third day after his notice of appeal was filed.

The purpose of a writ of mandamus is to enforce an established right or to enforce the performance of a duty. *Manila School Dist. No. 15 v. Wagner*, 357 Ark. 20, 159 S.W.3d 285 (2004). It is issued only to compel an officer or judge to take some action. *Arkansas Democrat-Gazette v. Zimmerman*, 341 Ark. 771, 20 S.W.3d 301 (2000). A petitioner must show a clear and certain right to the relief sought, and the absence of any other adequate remedy when requesting a writ of mandamus. *Johnson v. Hargrove*, 362 Ark. 649, 210 S.W.3d 79 (2005).

Here, petitioner has not shown that he is entitled to the relief sought. He has not shown that there is a pending motion before the circuit court or that he is entitled to any ruling by the circuit court in regard to his notice of appeal. We therefore deny the petition for writ of mandamus.

Petition denied.

Gunter, J., not participating.

Brown, J., not participating.