

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

In re James H. Gentry

No. 05-20-00442-CV · No. No. 05-20-00442-CV · Decided December 30, 2020

SUMMARY

The Fifth District Court of Appeals of Texas denied James H. Gentry’s petition for writ of mandamus seeking to compel the trial court to rule on a motion for a nunc pro tunc order. The court held that the petition failed to comply with certification and record-authentication requirements under Texas Rules of Appellate Procedure 52.3 and 52.7.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	Bill Whitehill; Justice Whitehill; Justice Pedersen III; Justice Carlyle
JURISDICTION	Texas
DECIDED	December 30, 2020
DOCKET	No. 05-20-00442-CV
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original proceeding seeking a writ of mandamus compelling the trial court to rule on a motion for order nunc pro tunc.
STANDARD OF REVIEW	Mandamus relief requires the relator to establish entitlement to relief with a sufficient record; the relator bears the burden of providing the necessary record.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential effect not otherwise specified in the document.
PARTIES	James H. Gentry, Relator

TOPICS

- appellate procedure
- civil procedure
- remedies

PRACTICE AREAS

- appellate procedure
- civil procedure
- remedies

QUESTIONS PRESENTED

1. Whether Gentry's mandamus petition complied with the certification requirement of Texas Rule of Appellate Procedure 52.3(j).
2. Whether Gentry established entitlement to mandamus relief by providing a sufficient record, including certified or sworn copies of material documents under Texas Rules of Appellate Procedure 52.3(k)(1)(A) and 52.7(a)(1).

HOLDINGS

1. A mandamus petition must contain a certification substantially stating that the relator reviewed the petition and concluded that every factual statement is supported by competent evidence included in the appendix or record; a certification that the petition is merely true and correct to the best of the relator's knowledge does not satisfy Rule 52.3(j).
2. A relator seeking mandamus relief must provide a sufficient record, including certified or sworn copies of documents material to the claim; unauthenticated copies do not satisfy the appellate rules or establish entitlement to mandamus relief.

KEY QUOTATIONS

“A petition seeking mandamus relief must contain a certification stating that the relator “has reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.”” (at 1)

“Furthermore, as the party seeking relief, the relator has the burden of providing the Court with a sufficient record to establish his right to mandamus relief.” (at 2)

“Having concluded that relator’s petition does not meet the requirements in the rules of appellate procedure for consideration of mandamus relief, we deny relator’s petition.” (at 3)

FACTUAL BACKGROUND

Gentry sought to compel the trial court to rule on his motion for an order nunc pro tunc correcting the trial court's judgment. His petition included a certification stating that the petition was true and correct to the best of his knowledge under threat of perjury, but it did not substantially state the certification required by Rule 52.3(j). The attached documents were neither certified nor sworn copies, leaving the appendix improperly authenticated.

PROCEDURAL HISTORY

James H. Gentry filed a petition for writ of mandamus in the Dallas Court of Appeals concerning proceedings in the 199th Judicial District Court of Collin County. The appellate court determined that the petition lacked the certification required by Texas Rule of Appellate Procedure 52.3(j) and did not include a properly authenticated appendix or record sufficient to establish entitlement to relief. The court denied the petition.

DISPOSITION

writ_denied

CASES CITED

- In re Butler, 270 S.W.3d 757, 758 (Tex. App.—Dallas 2008, orig. proceeding)
- Walker v. Packer, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding)
- In re Taylor, 28 S.W.3d 240, 245 (Tex. App.—Waco 2000, orig. proceeding)
- In re Z.L.T., 124 S.W.3d 163, 166 (Tex. 2003)

OPINION

PER CURIAM.

DENIED and Opinion Filed May 18, 2020 S In The Court of Appeals Fifth District of Texas at Dallas No. 05-20-00442-CV IN RE JAMES H. GENTRY, Relator Original Proceeding from the 199th Judicial District Court Collin County, Texas Trial Court Cause Nos. 199-81623-07, 199-81624-07, 199-81625-07, 199-81626-07, 199-81627-07 MEMORANDUM OPINION NUNC PRO TUNC¹ Before Justices Whitehill, Pedersen III, and Carlyle Opinion by Justice Whitehill James H. Gentry has filed a petition for writ of mandamus requesting the Court to compel the trial court to rule on his motion for order nunc pro tunc to correct the trial court's judgment.

We deny relief. A petition seeking mandamus relief must contain a certification stating that the relator “has reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.” ¹ We issue this memorandum opinion nunc pro tunc to correct a clerical order in the style of the case reflecting it applies to relator's cases listed above and not just to cause no. 199-81623-07.

The body of the opinion is unchanged. TEX. R. APP. P. 52.3(j). The Court requires relator's certification to state substantially what is written in rule 52.3(j). See In re Butler, 270 S.W.3d 757, 758 (Tex. App.—Dallas 2008, orig. proceeding). Relator's petition contains a certification that his petition is “TRUE and CORRECT, to the best of my knowledge under the threat of perjury....” Thus, relator's petition does not comply with the certification requirement of rule 52.3(j).

See id. Furthermore, as the party seeking relief, the relator has the burden of providing the Court with a sufficient record to establish his right to mandamus relief. Walker v. Packer, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding). Relator's record must meet the requirements of appellate rule of procedure 52.3. Rule 52.3(k)(1)(A) requires the relator to file an appendix with his petition that contains “a certified or sworn copy of any order complained of, or any other document showing the matter complained of.”² TEX. R. APP.

P. 52.3(k)(1)(A). Additionally, rule 52.7(a)(1) requires the relator to file with the petition “a certified or sworn copy of every document that is material to the relator's claim for relief that was filed in any underlying proceeding.” TEX. R. APP. P. 52.7(a)(1). ² Documents become sworn copies when they are attached to an affidavit or to an unsworn declaration conforming to section 132.001 of the Texas Government Code.

See TEX. GOV'T CODE ANN. § 132.001; Butler, 270 S.W.3d at 759; In re Taylor, 28 S.W.3d 240, 245, (Tex. App.—Waco 2000, orig. proceeding), disapproved on other grounds by In re Z.L.T., 124 S.W.3d 163, 166 (Tex. 2003).

The affidavit or unsworn declaration must affirmatively show it is based on relator's personal knowledge. See Butler, 270 S.W.3d at 759. The affidavit or unsworn declaration is insufficient unless the statements in it are direct and unequivocal and perjury can be assigned to them. See *id.* An affidavit or unsworn declaration would comply with the rule if it stated, under penalty of perjury, that the affiant has personal knowledge that the copies of the documents in the appendix are true and correct copies of the originals.

See *id.* –2– Relator has attached copies of documents to his petition, but the documents are not certified or sworn copies and thus are not properly authenticated under the rules of appellate procedure. Without a properly authenticated appendix containing certified or sworn copies of documents, relator has not met his burden. See Butler, 270 S.W.3d at 759.

Having concluded that relator's petition does not meet the requirements in the rules of appellate procedure for consideration of mandamus relief, we deny relator's petition. See Butler, 270 S.W.3d at 758–59. /Bill Whitehill/ BILL WHITEHILL JUSTICE 200442F.P05 –3–