

COURT OF APPEALS OF TEXAS, NINTH DISTRICT AT BEAUMONT

In re Johnny Lewis Jr.

No. 09-20-00272-CV · No. No. 09-20-00272-CV · Decided January 14, 2021

SUMMARY

The Ninth Court of Appeals of Texas dismissed Johnny Lewis Jr.'s petition for a writ of mandamus. The court concluded that Lewis failed to cure identified defects and failed to serve the parties as required by the Texas Rules of Appellate Procedure, without reaching the merits of his claims.

CASE DETAILS

COURT	Court of Appeals of Texas, Ninth District at Beaumont
WRITING FOR THE COURT	Per Curiam; Golemon, C.J.; Horton, J.; Johnson, J.
JURISDICTION	Texas
DECIDED	January 14, 2021
DOCKET	No. 09-20-00272-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Original mandamus proceeding in which Johnny Lewis Jr. sought relief based on the trial court's alleged failure to rule on his motion seeking recusal of the trial judge.
STANDARD OF REVIEW	Mandamus relief generally requires a clear abuse of discretion and no adequate remedy by appeal; the court did not reach the merits because the petition was procedurally defective and sought relief beyond the court's jurisdiction.
PRECEDENTIAL VALUE	published

TOPICS

[writ of certiorari](#)[appellate jurisdiction](#)[service of process](#)[appellate procedure](#)[civil procedure](#)

PRACTICE AREAS

[Civil procedure](#)[Appellate procedure](#)[Mandamus](#)

QUESTIONS PRESENTED

1. Whether the Court of Appeals had jurisdiction to issue mandamus directing a trial court clerk to prepare and provide a clerk's record.
2. Whether Lewis's failure to serve his mandamus petition and subsequent letter required dismissal under the Texas Rules of Appellate Procedure.
3. Whether the petition should be dismissed without reaching the merits because Lewis failed to cure identified procedural defects.

HOLDINGS

1. The Court of Appeals lacks jurisdiction to issue a writ of mandamus requiring action by a trial court clerk.
2. A mandamus petitioner must serve the petition and other appellate communications on the parties against whom relief is sought and must provide the required certificate of service; Lewis's failure to do so supported dismissal.
3. The mandamus petition must be dismissed because Lewis failed to cure the identified defects and failed to comply with applicable service requirements; the court dismissed without addressing the merits.

KEY QUOTATIONS

"For the above reasons, we dismiss Lewis's petition without any reference to the merits of his claims."

FACTUAL BACKGROUND

Lewis sought mandamus relief concerning the trial court's failure to rule on his motion asking the trial judge to recuse from his case. After being notified that his petition was defective, Lewis failed to amend it by the deadline. He instead filed a letter requesting that the appellate court order the trial court clerk to prepare and provide a clerk's record, but he did not serve his petition or letter on the parties against whom he sought relief.

PROCEDURAL HISTORY

Lewis filed a petition for writ of mandamus in the Court of Appeals. The court notified him that the petition was defective, directed him to amend it by December 21, 2020, and warned that failure to cure the defects would result in dismissal. Lewis did not amend the petition and instead filed a letter requesting that the appellate court order the trial court clerk to prepare and provide a copy of the clerk's record. The appellate court dismissed the petition without addressing the merits.

DISPOSITION

dismissed

OPINION

PER CURIAM.

In The Court of Appeals Ninth District of Texas at Beaumont _____ NO. 09-20-
00272-CV _____ IN RE JOHNNY LEWIS JR.

Original
Proceeding 172nd District Court of Jefferson County, Texas Trial Cause No. E-205,714

MEMORANDUM OPINION In a petition seeking relief through a writ of mandamus, Johnny Lewis Jr. complains the trial court abused its discretion by failing to rule on a motion he filed in the trial court in which he asked the trial court judge to recuse from hearing his case.

After Lewis filed his petition seeking mandamus relief, we notified him that the petition he filed was defective. We sent him a letter directing him to correct the deficiencies in his petition. We also warned him that unless he amended his petition and cured the defects we identified in the letter we sent to him by December 21, 2020, we would dismiss his petition for mandamus relief.

1 Lewis failed to amend his petition. Instead, he sent the Court a letter, which our Clerk filed on December 30, 2020. In it, Lewis asked this Court to order the trial court's clerk to prepare the clerk's record and to provide him with a copy. But this Court does not have jurisdiction to issue a writ of mandamus requiring an action by a trial court clerk.

Moreover, Lewis failed to serve both his petition for mandamus and the letter he sent to this Court on the parties against whom he is seeking relief. See Tex. R. App. P. 6.3(c) (requiring all notices and other communications filed in the appellate court to be served on "a party if the party is not represented by counsel"); Tex. R. App. P. 9.5(e) (requiring a document that is presented for filing in the Court of Appeals to be accompanied by a certificate of service, which is signed by the person who made service, shows the date and manner of service, and the name and address of each party on which the document was served).

Thus, Lewis continues to ignore the Rules requiring litigants to serve documents filed in this Court on the parties to the proceeding. For the above reasons, we dismiss Lewis's petition without any reference to the merits of his claims. PETITION DISMISSED. PER CURIAM Submitted on January 13, 2021 Opinion Delivered January 14, 2021 Before Golemon, C.J., Horton and Johnson, JJ. 2