

**Petition for Writ of Mandamus Denied and Memorandum Majority and Concurring Opinions filed October 20, 2022.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-22-00583-CV**

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**IN RE RONALD SCOTT CATT, Relator**

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**ORIGINAL PROCEEDING  
WRIT OF MANDAMUS  
268th District Court  
Fort Bend County, Texas  
Trial Court Cause No. 22-DCV-290442**

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**MEMORANDUM CONCURRING OPINION**

This is not one of this court’s “extra rules” cases that shamefully blocks access to justice by requiring individuals acting pro se who are in jail or prison to “present” the relevant motion or application to the trial court judge and that a filed-marked copy of the relevant motion or application must be part of the mandamus record. *See, e.g., In re Gomez*, 602 S.W.3d 71, 74–75 (Tex. App.—Houston [14th Dist.] 2020, no pet.) (criminal orig. proceeding) (Spain, J., concurring); *In re Pete*, 589 S.W.3d 320, 322–24 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (criminal orig. proceeding) (Spain, J., concurring); *In re Flanigan*, 578 S.W.3d 634, 637–38 (Tex.

App.—Houston [14th Dist.] 2019, no pet.) (criminal orig. proceeding) (Spain, J., concurring); *In re Marshall*, No. 14-20-00318-CR, 2020 WL 3467262 (Tex. App.—Houston [14th Dist.] June 25, 2020, no pet.) (mem. op., not designated for publication) (orig. proceeding) (Spain, J., concurring). All those cases were criminal in nature. This original proceeding is civil in nature.

Here, relator has complied with the mandatory portions of the Texas Rules of Appellate Procedure discussed in this court’s *In re Kholaiif* decision, which appears to be the first time the court has held what constitutes a proper original-proceeding appendix and record. Tex. R. App. P. 52.3(k)(1) (requiring that appendix must contain certified or sworn copy of any order complained of, or any other document showing matter complained of), 52.7(a) (requiring relator to file record containing (1) certified or sworn copy of every document that is material to relator’s claim for relief and that was filed in any underlying proceeding and (2) properly authenticated transcript of any relevant testimony from any underlying proceeding, including any exhibits offered in evidence, or statement that no testimony was adduced in connection with matter complained); *In re Kholaiif*, 624 S.W.3d 228, 232 (order), *mand. disp’d*, 615 S.W.3d 369 (Tex. App.—Houston [14th Dist.] 2020) (orig. proceeding); *see also* Tex. Civ. Prac. & Crim. Code Ann. § 132.001 (authorizing unsworn declarations).<sup>1</sup> Relator has also complied with the mandatory certification of the petition that was part of the holding in *Kholaiif*. Tex. R. App. 52.3(j) (requiring

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<sup>1</sup> Relator included all record items in the appendix to his petition, rather than file a separate original-proceeding record. This is certainly acceptable so long as the documents and transcripts, including any exhibits offered in evidence, comply with the requirements for the record. When Texas Rule of Appellate Procedure 52 was promulgated in 1997, relators were required to file *multiple* paper copies of their petitions that contained an appendix of key items, but only *one* copy of the complete paper original-proceeding record. With electronic filing, it no longer makes practical sense to require both a separate appendix and record.

relator to certify that every factual statement in petition is supported by competent evidence in appendix or record); *Kholaif*, 624 S.W.3d at 229.

Although this court is not consistent in its use of “deny”—a disposition on the merits—and “dismiss”—a nonmerits procedural disposition, the court does indeed deny the petition in this original proceeding based on the merits. *Compare Deny*, Merriam-Webster.com, [www.meriam-webster.com/dictionary/deny](http://www.meriam-webster.com/dictionary/deny) (last visited October 12, 2022) (“to give a negative answer to”) *with Dismiss*, Merriam-Webster.com, [www.meriam-webster.com/dictionary/dismiss](http://www.meriam-webster.com/dictionary/dismiss) (last visited October 12, 2022) (“to put out of judicial consideration; refuse to hear or hear further in court”); *see also Dismiss*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“To send (something) away; specif., to terminate (an action or claim) without further hearing.”).<sup>2</sup> Hopefully no one on this court would disagree that cases before the court should be determined, if possible, on the merits.

There is still the matter of the “extra rules” for pro se incarcerated persons in criminal cases. Eventually this court will receive an original proceeding that is criminal in nature that complies with the mandatory portions of the Texas Rules of Appellate Procedure discussed in the *Kholaif* decision. Then we shall see what happens.

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<sup>2</sup> *Black’s Law Dictionary* does not define the word “deny.”

Texas Rule of Appellate Procedure 42 uses “dismiss” and its variants to describe nonmerits-based dispositions of appeals. Tex. R. App. P. 42. Technically Rule 42 does not apply to Rule 52 original proceedings Tex. R. App. P. 52. But if there isn’t a Latin maxim that the law should not be arbitrary and capricious, then someone should invent that maxim.

In an ideal world, the Supreme Court of Texas would adopt definitions of words like “deny” and “dismiss” that apply across the various rules promulgated by the court.

I concur with the court's holding that relator is not entitled to the relief sought and agree with the disposition to deny relator's petition for writ of mandamus.

/s/ Charles A. Spain  
Justice

Panel consists of Justices Spain, Poissant, and Wilson (Spain, J., concurring).