



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-17-00060-CV

IN RE SCOTT ALLAN ODAM, RELATOR

ORIGINAL PROCEEDING FOR WRIT OF MANDAMUS

February 16, 2017

MEMORANDUM OPINION

Before Quinn, C.J., and Campbell and Pirtle, JJ.¹

Scott Allan Odam petitioned this Court for a writ of mandamus directed at the Honorable Les Hatch, 237th Judicial District, Lubbock County, Texas (trial court). Through the petition, he attacks the trial court's decisions to (1) dismiss his lawsuit for his failing to pay requisite filing fees and (2) deny his request for a temporary restraining order. So too are we asked to direct the trial court to docket his suit for trial. We deny the petition.

Mandamus relief is appropriate to correct a clear abuse of discretion committed by a trial court when no adequate remedy by appeal exists. *In re Frank Kent Motor Co.*, 361 S.W.3d 628, 630 (Tex. 2012) (orig. proceeding); *In re Ramirez*, No. 07-13-00217-

¹ Justice James Campbell did not participate in this proceeding.

CV, 2013 Tex. App. LEXIS 11374, at *2 (Tex. App.—Amarillo Sept. 4, 2013, orig. proceeding) (per curiam). Furthermore, the burden lies with the relator to establish his entitlement to the relief. *In re Ramirez*, 2013 Tex. App. LEXIS 11374, at *2.

Here, the appendix contains the trial court's order dismissing Odam's lawsuit, without prejudice; the order was signed on February 8, 2017. The dismissal is a final order from which Odam could perfect an appeal. Yet, he fails to explain why his complaint regarding the propriety of the dismissal order cannot be addressed through such an appeal. Consequently, he has not established that he lacks an adequate legal remedy by appeal with regard to the dismissal.

Furthermore, one seeking mandamus relief has the obligation to provide the court with an appendix containing a certified or sworn copy of any order about which he complains. TEX. R. APP. P. 52.3(k)(1)(A). The appendix provided this court contains no such copy of an order denying his request for a restraining order. Nor does it illustrate that the request was presented to the trial court for consideration. *See In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding) (holding that “trial court cannot be found to have abused its discretion [for purposes of issuing a writ of mandamus] until the complainant establishes that [it] 1) had a legal duty to perform a non-discretionary act, 2) was asked to perform the act, and 3) failed or refused to do so” and, to the extent that one complains of the trial court's failure to act, “application of the foregoing rule would necessarily require him to illustrate that the trial court was aware of the motion”). Based on the record at bar, we are left to wonder if the trial court knew of or otherwise acted upon Odam's desire to obtain a restraining order. Thus, Odam has

neither complied with the directive of Rule 52.3(k)(1)(A) nor satisfied the prerequisites discussed in *Frank Kent Motor Company*, *Ramirez*, or *Chavez*.

The petition is denied.

Brian Quinn
Chief Justice