

**Petition for Writ of Mandamus Denied and Memorandum Opinion filed
August 15, 2017.**



In The

Fourteenth Court of Appeals

NO. 14-17-00640-CV

IN RE KERRY FIELDS, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
County Civil Court at Law No. 2
Harris County, Texas
Trial Court Cause No. 1064743**

MEMORANDUM OPINION

On August 3, 2017, relator Kerry Fields filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. § 22.221 (West 2004); *see also* Tex. R. App. P. 52. In the petition, relator asks this court to compel the Honorable Theresa Chang, presiding judge of the County Civil Court at Law No. 2 of Harris County, Texas to

vacate her oral ruling on June 6, 2017 granting real party-in-interest Geico Advantage Insurance Company's motion to strike and exclude relator's trial exhibits and trial witnesses.

“Those seeking the extraordinary remedy of mandamus must follow the applicable procedural rules.” *In re Le*, 335 S.W.3d 808, 813–14 (Tex. App.—Houston [14th Dist.] 2011, orig. proceeding). Relator has not complied with the Texas Rules of Appellate Procedure in at least four respects.

First, as the party seeking relief, relator has the burden of providing this court with a sufficient record to establish his right to mandamus relief. *See Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992); Tex. R. App. P. 52.7(a)(1) (relator must file with petition “a certified or sworn copy of every document that is material to the relator's claim for relief and that was filed in any underlying proceeding”). None of the documents in relator's appendix are certified or sworn to as true copies of documents that were filed with the trial court.

Second, the mandamus record is incomplete. The record does not include Geico's motion to strike and exclude relator's trial exhibits and trial witnesses and relator's response, if any, which are material to relator's claim for relief. To establish that the trial court abused its discretion, it is generally incumbent on relator to provide our court with a record of all material pleadings and evidence that were considered by the trial court when it ruled. *See In re Le*, 335 S.W.3d at 813–14 (holding this Court would not find an abuse of discretion on an incomplete record); *In re Haynes*, No. 14-14-00668-CV, 2014 WL 4202651, at *1 (Tex. App.—Houston [14th Dist.] Aug. 26, 2014, orig. proceeding) (per curiam) (mem. op.) (without an

understanding of what information was before the trial court, this court does not have a basis on which to conclude that the trial court abused its discretion.); *In re Approximately \$61,083.00*, No. 14–13–01059–CV, 2014 WL 866040, at *2 (Tex. App.—Houston [14th Dist.] Mar. 4, 2014, no pet.) (per curiam) (mem. op.) (“Without a complete picture of what facts were before the trial court and how the court applied the law to those facts in reaching its decision, this Court does not have a basis on which to conclude that the trial court abused its discretion.”).

Third, Texas Rule of Appellate Procedure 52.3(j) provides that “[t]he person filing the petition must certify that he or she has reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.” *See* Tex. R. App. P. 52.3(j). Relator’s petition does not contain this certification.

Finally, Relator’s petition for writ of mandamus does not show a certificate of service on the real party-in-interest Geico Advantage Insurance Company, as required by Texas Rules of Appellate Procedure 9.5 and 52.2.

For these reasons, we deny relator’s petition for writ of mandamus.

Geico’s response to the petition for writ of mandamus asks our court to impose sanctions on Relator. We deny the request for sanctions.

PER CURIAM

Panel consists of Justices Jamison, Brown, and Donovan.