

Petition for Writ of Mandamus Denied and Memorandum Majority and Dissenting Opinions filed September 10, 2021.



In The

Fourteenth Court of Appeals

NO. 14-21-00459-CV

IN RE M.H. AND K.H, Relators

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
311th District Court
Harris County, Texas
Trial Court Cause No. 2021-11726**

MEMORANDUM DISSENTING OPINION

Persisting in my view that our duty as judges is to reach a decision on the merits based on a proper record and that due process and due course of law require that this court give notice when the original-proceeding record does not comply with the Texas Rules of Appellate Procedure, I would give relators ten-days notice of involuntary dismissal for failure to comply with Texas Rule of Appellate Procedure 52.7(a) requiring (1) a certified or sworn copy of every document that is

material to the relators' claim for relief and that was filed in any underlying proceeding and (2) a properly authenticated transcript of any relevant testimony from any underlying proceeding, including any exhibits offered in evidence, or a statement that no testimony was adduced in connection with the matter complained. Tex. R. App. P. 52.7(a); *see In re Kholaiif*, 624 S.W.3d 228, 231 (order), *mand. disp'd*, 615 S.W.3d 369 (Tex. App.—Houston [14th Dist.] 2020) (orig. proceeding); *see also* Tex. R. 52.3(k)(1) (necessary contents of petition) Tex. Civ. Prac. & Crim. Code Ann. § 132.001 (authorizing unsworn declarations).

And while the court may well believe with the best of intentions that an expedient denial better serves justice than allowing the parties to make their best argument based on a proper record, I would give the parties that opportunity by providing notice and an opportunity to cure.

I therefore dissent and express no opinion on the merits of the petition for a writ of mandamus.

/s/ Charles A. Spain
Justice

Panel consists of Justices Jewell, Spain, and Wilson.