



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-10-00013-CV

MICHAEL KENNEDY, Appellant

V.

JAMES T. WORTHAM [SIC], ET AL., Appellees

On Appeal from the 369th Judicial District Court
Anderson County, Texas
Trial Court No. 369-09-4096

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

In the District Court of Anderson County, Michael Kennedy (Kennedy) and Danielle Simpson (Simpson), Texas prison inmates, filed an emergency motion to stay or abate Simpson's execution. The motion's caption names as defendants the Honorable James T. Worthen (misnamed Wortham by Kennedy in some places in the record), Chief Justice of the Texas Court of Appeals for the Twelfth Appellate District, and Anderson County District Judge, the Honorable Mark Calhoon (misnamed Calhoun by Kennedy in some places in the record). Acting on its own motion, the trial court, the Honorable Deborah Oakes Evans, dismissed the motion without a hearing, finding that the suit was frivolous or malicious and that Kennedy and Simpson failed to satisfy the requirements of Chapter 14 of the Texas Civil Practice and Remedies Code.¹

Kennedy appeals from the trial court's dismissal of the motion to stay or abate Simpson's execution. Kennedy filed a single brief,² in which he raises an issue common to both of his appeals.³ On appeal, Kennedy argues that the trial court erred in dismissing his action because the trial judge was a named defendant and thus was disqualified from presiding over this case.

¹The trial court also ordered Kennedy to pay court fees and costs in the amount of \$229.00.

²Simpson did not file an appellate brief.

³Defendant appeals from orders of dismissal in cause numbers 06-10-00012-CV and 06-10-00013-CV.

We addressed this issue in detail in our opinion of this date on Kennedy's appeal in cause number 06-10-00012-CV.⁴ For the reasons stated therein, we likewise conclude in this case that error has not been shown.

We overrule Kennedy's point of error and affirm the order of dismissal.

Josh Morriss, III
Chief Justice

Date Submitted: May 14, 2010
Date Decided: May 21, 2010

⁴Unlike in the companion appeal, our cause number 06-10-00012-CV, there is a question in this case regarding whether or not Evans is a named defendant. We need not reach that issue, however, because, even if she was a named defendant, she has no direct personal or pecuniary interest in the case, as detailed in our opinion of this date on Kennedy's appeal in the companion appeal.