



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

No. 06-10-00104-CV

IN RE: DAVID ALAN SHEPHERD

Original Mandamus Proceeding

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

MEMORANDUM OPINION

David Alan Shepherd has filed a petition for writ of mandamus in which he asks this Court to order the judge of the 188th Judicial District Court of Gregg County to supply him with a copy of documents in connection with his appeal from a judgment against him in his lawsuit against Office Depot and the United Parcel Service (UPS). Specifically, Shepherd asks us to order the trial judge to supply him with a transcription of a hearing held on June 28, 2010, with findings of fact and conclusions of law on the dismissal of his case, and with a filed copy of his answer to UPS's "motion for dismissal and joinder of motion for dismissal pursuant to C.P.R.C. 14.003."

We grant the extraordinary relief of mandamus only when the trial court has clearly abused its discretion or violated a duty imposed by law, and the relator lacks an adequate appellate remedy. *In re Team Rocket, L.P.*, 256 S.W.3d 257 (Tex. 2008) (orig. proceeding).

It is the responsibility of the relator to submit with the petition seeking the extraordinary relief an appendix containing a sworn copy of any order complained of, or any other document showing the matter complained of. TEX. R. APP. P. 52.1, 52.3(k)(1)(A). The petition must be accompanied by a certified or sworn copy of every document material to the relator's claim for relief and that was filed in any underlying proceeding. TEX. R. APP. P. 52.7(a)(1). A mandamus action requires certainty as to both pleadings and facts. *Johnson v. Hughes*, 663 S.W.2d 11, 12 (Tex. App.—Houston [1st Dist.] 1983, orig. proceeding). If relator's right to mandamus rests on doubtful or disputed facts, mandamus will not issue. *West v. Solito*, 563 S.W.2d 240, 245 (Tex.

1978) (orig. proceeding); *In re Motor Car Classics LLC*, No. 06-10-00051-CV, 2008 WL 2784437 (Tex. App.—Texarkana July 15, 2010, orig. proceeding) (mem. op.).

In this proceeding, we have nothing provided other than unsworn statements by Shepherd outlining alleged failures by the trial court to comply with requests, with no underpinning of documentation whatsoever to show that requests for a record were made, that an appeal is pending at all in any court, or that Shepherd is entitled to a free record if such an appeal exists. We have examined the posted records of this Court and of the Twelfth Court of Appeals in Tyler, and note that no appeal is pending involving this individual in either court.

Shepherd has not shown himself entitled to the relief sought.

We deny the petition.

Bailey C. Moseley
Justice

Date Submitted: October 13, 2010
Date Decided: October 14, 2010