



IN THE  
TENTH COURT OF APPEALS

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No. 10-10-00107-CV

IN RE TRENT ALVON SMITH

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Original Proceeding

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MEMORANDUM OPINION

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Trent Alvon Smith seeks a writ of mandamus compelling Respondent, the Honorable Robyn Flowers, District Clerk of Walker County, to file his "Petition for Texas Torts Claim."<sup>1</sup> We will deny Smith's request for mandamus relief.

When a district clerk refuses to accept a pleading for filing, the party should attempt to file the pleading directly with the district judge, explaining in a verified motion that the clerk refused to accept the pleading for filing. Should the district judge refuse to accept the pleading for filing, this Court would have jurisdiction under our mandamus power to direct the district judge to file the pleading.

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<sup>1</sup> We apply Rule of Appellate Procedure 2 to disregard numerous deficiencies in Smith's mandamus pleadings, including his failure to serve copies on Respondent Flowers. *See* TEX. R. APP. P. 2, 9.5.

*In re Simmonds*, 271 S.W.3d 874, 879 (Tex. App.—Waco 2008, orig. proceeding) (citation and footnote omitted) (quoting *In re Bernard*, 993 S.W.2d 453, 455 (Tex. App.—Houston [1st Dist.] 1999, orig. proceeding) (O’Connor, J., concurring)).

Here, there is no indication that Smith followed this procedure. Accordingly, we deny his mandamus petition.<sup>2</sup>

FELIPE REYNA  
Justice

Before Chief Justice Gray,  
Justice Reyna, and  
Justice Davis  
Petition denied  
Opinion delivered and filed April 7, 2010  
[OT06]

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<sup>2</sup> Smith also filed a motion for leave to file his mandamus petition. That motion is dismissed as moot. See TEX. R. APP. P. 52 cmt. (“The requirement of a motion for leave in original proceedings is repealed.”); *In re McGee*, 213 S.W.3d 405, 406 n.2 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding) (per curiam).

