



IN THE
TENTH COURT OF APPEALS

No. 10-10-00249-CV

IN RE ROY EDWARD ADDICKS, JR.

Original Proceeding

MEMORANDUM OPINION

Relator Roy Addicks, Jr. has filed a petition for writ of mandamus complaining that Respondent, the Honorable Donald L. Kraemer, Judge of the Twelfth District Court of Walker County, has refused to direct Robyn Flowers, the District Clerk of Walker County, to file and forward Addicks's notice of restricted appeal to us.¹ Addicks allegedly tendered his notice of restricted appeal to the District Clerk for filing on August 25, 2009, in Cause No. 23,962, styled Gordon Simmonds v. Charles T. O'Reilly,

¹ Typically, a mandamus proceeding to compel the filing or forwarding of a notice of appeal is brought against the trial court clerk rather than the trial court judge. *See, e.g., In re Mullins*, No. 10-09-00143-CV, 2009 WL 2959716 (Tex. App.—Waco Sept. 16, 2009, no pet.) (mem. op.); *In re Smith*, 270 S.W.3d 783 (Tex. App.—Waco 2008, orig. proceeding). "Mandamus relief is appropriate when a trial court clerk fails to file and forward a notice of appeal to the appropriate court of appeals." *Smith*, 270 S.W.3d at 785 & n.2.

et al., filed in the Twelfth District Court.²

A review of our records indicates that Simmonds appealed Cause No. 23,962 to this court in 2009 and it was docketed as No. 10-09-00097-CV, but pursuant to a Texas Supreme Court order, the appeal was transferred to the Fourteenth District Court of Appeals in Houston on April 8, 2009.³ The Houston court of appeals dismissed that appeal for want of jurisdiction (without prejudice to filing a new appeal after a final judgment was signed) because the judgment was not final and appealable. *Simmonds v. O'Reilly*, No. 14-09-00337-CV, 2010 WL 2517976 (Tex. App.—Houston [14th Dist.] June 24, 2010, no pet.) (mem. op.). For that reason, Addicks's request for mandamus relief is moot, as the trial court has jurisdiction of the underlying case and there was no final judgment for Addicks to appeal. We thus deny his petition, and all pending motions are dismissed as moot.

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Reyna, and
Justice Davis

Petition denied; all pending motions dismissed as moot
Opinion delivered and filed November 24, 2010
[OT06]

² Addicks states that he filed a motion to join (or intervene) in the trial court in Simmonds's lawsuit.

³ In a motion filed with us, Addicks states that he forwarded a copy of his restricted notice of appeal to us on or about August 25, 2009, but by that time, the appeal of Cause No. 23,962 had been transferred to the Houston court, which possesses the file for the appeal. Our clerk would have forwarded anything sent by Addicks to the Houston court. That court's website reflects the filing of several "amended notices of appeal" after the appeal was transferred, but we cannot ascertain whether any of them might be Addicks's restricted notice of appeal. Finally, in an April 12, 2010 letter, we advised Addicks that the appeal had been transferred to Houston and that we were forwarding a letter from him to Robyn Flowers to that court.