

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-11-00822-CV

**In re Kim Henderson and Randy Henderson, Individually
and as Next Friends of MFPD 263, a Minor**

ORIGINAL PROCEEDING FROM BURNET COUNTY

MEMORANDUM OPINION

Relators Kim Henderson and Randy Henderson, individually and as next friends of MFPD 263, a minor, filed a petition for writ of mandamus alleging that the district court's November 29, 2011 "Judge's Fiat Regarding Pretrial Publicity By Parties" violates their constitutional free speech rights and should be vacated. The petition raises important issues as to the proper balancing of the constitutional rights to free speech and fair trial. However, the Hendersons do not show that they have asked the district court for relief from the order and that such relief was denied, or that such a request would have been futile; thus mandamus relief is not appropriate at this time. *See Terrazas v. Ramirez*, 829 S.W.2d 712, 723-25 (Tex. 1991); *In re Hearst Newspapers*, 241 S.W.3d 190, 192 (Tex. App.—Houston [14th Dist.] 2007, orig. proceeding); *cf. In re Houston Chronicle*, 64 S.W.3d 103, 106 (Tex. App.—Houston [14th Dist.] 2001, orig. proceeding).

Accordingly, the Hendersons' petition for mandamus is denied without prejudice. *See* Tex. R. App. P. 52.8(a). Real party-in-interest Todd Freking's unopposed first amended motion to seal is granted, and the Hendersons' motion for temporary relief is dismissed.

Jeff Rose, Justice

Before Justices Puryear, Rose and Goodwin

Filed: December 22, 2011