NUMBER 13-17-00421-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE JUAN R. RIVERA

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

Before Justices Rodriguez, Contreras, and Benavides
Memorandum Opinion by Justice Benavides[1]

Juan R. Rivera, proceeding pro se, has filed documents in this Court through which he requests that we take "judicial notice" that "he has not received his requested motion" from the trial court. According to this pleading, it appears that Rivera filed a second motion in the trial court requesting findings of fact and conclusions of law on July 24, 2017, but has not received any ruling or notification regarding the same from the trial court. Rivera asserts that he "cannot proceed forward with his appeal until he receives

[1] *See* TEX. R. APP. P. 52.8(d) ("When granting relief, the court must hand down an opinion as in any other case," but when "denying relief, the court may hand down an opinion but is not required to do so."); TEX. R. APP. P. 47.4 (distinguishing opinions and memorandum opinions).

[the] requested motion." In support of his motion, Rivera has supplied us with a copy of his "Second Motion Requesting Findings of Fact and Conclusions of Law on his Bill of Review Judgment." The documents that Rivera has filed in this Court are otherwise unclear regarding the specific actions or orders complained of or the nature of the relief sought. Rivera's pleadings do not comply with either the requirements for an original proceeding or the requirements for a notice of appeal. *Compare* TEX. R. APP. P. 25.1 *with id.* R. 52.3. We address both forms of relief herein.

Because the document filed with us does not reference an order or judgment subject to appeal and relator appears to be asking us to command a public officer to perform an act, we construe Rivera's pleading as a petition for writ of mandamus. *See generally* TEX. R. APP. P. 25.1(a), (d); *In re Castle Tex. Prod. Ltd. P'ship*, 189 S.W.3d 400, 403 (Tex. App.—Tyler 2006, orig. proceeding) ("The function of the writ of mandamus is to compel action by those who by virtue of their official or quasi-official positions are charged with a positive duty to act.") (citing *Boston v. Garrison*, 152 Tex. 253, 256 S.W.2d 67, 70 (1953)).

Mandamus relief is proper to correct a clear abuse of discretion when there is no adequate remedy by appeal. *In re Christus Santa Rosa Health Sys.*, 492 S.W.3d 276, 279 (Tex. 2016) (orig. proceeding). The relator bears the burden of proving both of these requirements. *In re H.E.B. Grocery Co.*, 492 S.W.3d at 302; *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). In addition to other requirements, the relator must include a statement of facts supported by citations to "competent evidence included in the appendix or record," and must also provide "a clear and concise argument for the contentions made, with appropriate citations to authorities and to the appendix or

record." *See generally* TEX. R. APP. P. 52.3. Rivera's pleadings fail to meet the foregoing requirements, and accordingly, we deny relief. *See* TEX. R. APP. P. 52.8(a).

We further address whether Rivera's pleadings could be construed as a notice of appeal. Appellate courts are to "construe the Texas Rules of Appellate Procedure reasonably, yet liberally, so that the right to appeal is not lost by imposing requirements not absolutely necessary to effect the purpose of a rule." *Ross v. St. Luke's Episcopal Hosp.*, 462 S.W.3d 496, 501 (Tex. 2015) (quoting *Verburgt v. Dorner*, 959 S.W.2d 615, 616–17 (Tex.1997)). Thus, a court of appeals has jurisdiction over any appeal in which the appellant files an instrument in a bona fide attempt to invoke the appellate court's jurisdiction. *In re J.M.*, 396 S.W.3d 528, 530 (Tex. 2013) (per curiam); *Warwick Towers Council of Co–Owners v. Park Warwick, L.P.*, 244 S.W.3d 838, 839 (Tex. 2008); *Verburgt*, 959 S.W.2d at 616. As long as "the appellant timely files a document in a bona fide attempt to invoke the appellate court's jurisdiction, the court of appeals, on appellant's motion, must allow the appellant an opportunity to amend or refile the instrument required by law or our Rules to perfect the appeal." *Grand Prairie Indep. Sch. Dist. v. S. Parts Imports, Inc*., 813 S.W.2d 499, 500 (Tex. 1991); *In re J.M.*, 396 S.W.3d at 530; *see also* TEX. R. APP. P. 44.3 ("A court of appeals must not ... dismiss an appeal for formal defects or irregularities in appellate procedure without allowing a reasonable time to correct or amend the defects or irregularities."); *id.* R. 42.3 (providing that a court may dismiss an appeal for want of jurisdiction "after giving ten days' notice to all parties"). Thus, Texas courts have determined, under a liberal construction of the rules of appellate procedure, that an individual has filed an instrument in a bona fide attempt to invoke the appellate court's jurisdiction in some instances where an individual filed a defective document. See

Tex. G & S Invs., Inc. v. Constellation Newenergy, Inc., 459 S.W.3d 252, 255 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

We conclude that Rivera's actions in this cause may constitute a bona fide attempt to invoke appellate jurisdiction. Accordingly, we direct the Clerk of this Court to place his pleadings in a separate appellate cause as an attempted appeal, and to afford Rivera an opportunity to correct any deficiencies regarding that filling, if it can be done. We further direct the Clerk to send a copy of Rivera's pleadings to the trial court. *See* TEX. R. APP. P. 25(a).

GINA M. BENAVIDES,
Justice

Delivered and filed the
28th day of July, 2017.