

NO. 12-12-00399-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN RE:

§

ROGER LAVOY DODD,

§

ORIGINAL PROCEEDING

RELATOR

§

MEMORANDUM OPINION

Relator Roger Lavoy Dodd has filed a document entitled “Motion To File Petition For Mandamus,” which we construe as a petition for writ of mandamus. In his petition, Relator requests a writ of mandamus directing the “County Court Clerk or Judge for Nacogdoches County, Texas Courts to acknowledge, file, issue and respond to [Relator’s] Appeal already filed [from the Nacogdoches Municipal Court].” Because other information obtained in this proceeding confirms that Relator’s appeal has been filed by the County Clerk, we interpret Relator’s request as a complaint that Relator’s appeal has not been disposed of. We dismiss the petition in part and deny it in part.

COUNTY CLERK

This court’s mandamus jurisdiction is governed by Section 22.221 of the Texas Government Code. Section 22.221 expressly limits the mandamus jurisdiction of the court of appeals to (1) writs against a district court judge or a county court judge in the court of appeals’ district and (2) all writs necessary to enforce the court of appeals’ jurisdiction. TEX. GOV’T CODE ANN. § 22.221 (West 2004). Generally, we have no authority to issue a writ of mandamus against a county clerk. *See id.* In this case, Relator does not allege any specific act or omission by the County Clerk. Therefore, we cannot conclude that mandamus against the Nacogdoches County Clerk is necessary to enforce this court’s jurisdiction. *See id.* Consequently, we do not

have jurisdiction to address Relator's petition insofar as it pertains to the Nacogdoches County Clerk.

COUNTY JUDGE

In addressing the second portion of Relator's petition, we initially note that Relator has not identified a specific judge as the respondent. We will assume, however, that because his appeal is filed in the County Court of Nacogdoches County, he seeks relief against the judge of that court.

To be entitled to a writ of mandamus in a criminal case, the relator must show that (1) he has no other adequate legal remedy to redress his alleged harm and that (2) what he seeks to compel is a ministerial act, not involving a discretionary or judicial decision. *State ex rel. Young v. Sixth Judicial Dist. Court of Appeals*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig. proceeding). The relator also must provide the court with a record sufficient to establish its right to mandamus relief. TEX. R. APP. P. 52.7(a).

In an original proceeding, a relator is required to file an appendix as part of his petition and also a record. See TEX. R. APP. P. 52.3(k), 52.7. The appendix must contain (1) a certified or sworn copy of any order complained of, or any other document showing the matter complained of, and (2) unless voluminous or impracticable, the text of any rule, regulation, ordinance, statute, constitutional provision, or other law (excluding case law) on which the argument is based. TEX. R. APP. P. 52.3(k)(1)(A), (C). The record must contain (1) a certified or sworn copy of every document that is material to the relator's claim for relief and that was filed in any underlying proceeding and (2) a properly authenticated transcript of any relevant testimony from any underlying proceeding, including any exhibits offered in evidence, or a statement that no testimony was adduced in connection with the matter complained of. TEX. R. APP. P. 52.7.

Here, Relator did not provide an appendix or a record. Consequently, we are unable to evaluate his request for mandamus relief against the County Judge of Nacogdoches County.

DISPOSITION

Relator has not shown that he is entitled to mandamus relief against the County Clerk or the County Judge of Nacogdoches County. Accordingly, we *dismiss for want of jurisdiction* the

portion of Relator's petition pertaining to the County Clerk and *deny* the portion relating to the County Judge of Nacogdoches County.

BRIAN HOYLE

Justice

Opinion delivered November 30, 2012.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

NOVEMBER 30, 2012

NO. 12-12-00399-CR

ROGER LAVOY DODD,

Relator

v.

HON. JOE D. ENGLISH,

Respondent

ORIGINAL PROCEEDING

ON THIS DAY came to be heard the petition for writ of mandamus filed by **ROGER LAVOY DODD**, who is the relator in Cause No.1200000777, pending on the docket of the County Court of Nacogdoches County, Texas. Said petition for writ of mandamus having been filed herein on November 26, 2012, and the same having been duly considered, because it is the opinion of this Court that a writ of mandamus should not issue, it is therefore **CONSIDERED, ADJUDGED and ORDERED** that the portion of Relator's petition pertaining to the County Clerk of Nacogdoches County is **DISMISSED FOR WANT OF JURISDICTION** and the portion relating to the County Judge of Nacogdoches County is, hereby **DENIED**.

Brian Hoyle, Justice.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.