

**NO. 12-17-00218-CR**  
**IN THE COURT OF APPEALS**  
**TWELFTH COURT OF APPEALS DISTRICT**  
**TYLER, TEXAS**

*IN RE:* §  
*MICHAEL A. KENNEDY,* § *ORIGINAL PROCEEDING*  
*RELATOR* §

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***MEMORANDUM OPINION***  
***PER CURIAM***

In this original proceeding, Michael A. Kennedy seeks the recusal of this Court from a civil lawsuit allegedly filed in Anderson County. Relator further complains that this Court continues labeling his many petitions for writ of mandamus as criminal, based on his criminal conviction in trial court cause number 29326, when he claims to have filed a civil lawsuit. He contends that the current original proceeding is a “civil rights mandamus” seeking recusal of this Court from his civil lawsuit.

First, we note that Relator fails to provide the “clear and concise argument” and “appropriate citations to authorities” required by Texas Rule of Appellate Procedure 52.3(h). *See* TEX. R. APP. P. 52.3(h). Nor has he provided this Court with the documentary evidence required by the rules of appellate procedure. *See* TEX. R. APP. P. 52.3(k), 52.7(a)(1).

Second, Relator’s petition asserts that this Court should be recused because of events that allegedly occurred during the course of his criminal trial. His criminal case is no longer pending either in the trial court or this Court. *See Kennedy v. State*, No. 12–11–00041–CR, 2012 WL 3201924, at \*8 (Tex. App.–Tyler Aug. 8, 2012, pet. ref’d) (mem. op., not designated for publication) (affirming judgment on punishment); *see also Kennedy v. State*, No. 12–08–00246–CR, 2009 WL 4829989, at \*3–4 (Tex. App.–Tyler Dec. 16, 2009, pet. stricken) (mem. op., not designated for publication) (affirming judgment of conviction).

Finally, regardless of this proceeding’s nature as criminal or civil, the rules of appellate procedure expressly state that a party may seek recusal of a justice “before whom the case is *pending*.” TEX. R. APP. P. 16.3 (emphasis added). In this case, Relator filed a defective notice of appeal, separate from this original proceeding, that purportedly relates to the civil lawsuit. However, an appeal is not perfected until a proper notice of appeal is filed. *See* TEX. R. APP. P. 25.1(a).

As of the date of this opinion, Relator has not filed a proper notice of appeal; thus, appeal has not been perfected. Particularly, Relator has not furnished this Court with any information showing that he has filed a civil lawsuit or that a final judgment or appealable order has been signed in such lawsuit. *See* TEX. R. APP. P. 25.1(d), 52.3(k)(1)(A), 52.7(a)(1). Absent a final judgment or appealable order, this Court has no jurisdiction over an appeal from a civil lawsuit. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001); *see also Rusk State Hosp. v. Black*, 379 S.W.3d 283, 287 (Tex. App.—Tyler 2010), *aff’d*, 392 S.W.3d 88 (Tex. 2012). Thus, there is no appeal from the civil lawsuit properly pending before this Court.<sup>1</sup> Accordingly, we *deny* Relator’s petition for writ of mandamus.

Opinion delivered July 12, 2017.

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

(DO NOT PUBLISH)

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<sup>1</sup> On February 15, 2017, the Texas Court of Criminal Appeals issued an abuse of writ order against Relator, in which it found that he (1) filed seven applications regarding his conviction, (2) “continues to raise issues that have been presented and rejected in previous applications or that should have been presented in previous applications[,]” and (3) “[b]ecause of his repetitive claims, ... Applicant’s claims are barred from review under Article 11.07, § 4, and are waived and abandoned by his abuse of the writ.” *Ex Parte Kennedy*, No. WR-75,385-24 (Tex. Crim. App. Feb. 15, 2017). Relator has continued, unsuccessfully, to seek relief in the court of criminal appeals. *See Ex Parte Kennedy*, No. WR-75,385-26 (Tex. Crim. App. April 12, 2017) (denying motion for leave to file application for writ of habeas corpus); *see also Ex Parte Kennedy*, No. WR-75,385-31 (Tex. Crim. App. June 16, 2017) (dismissing application for writ of habeas corpus).



**COURT OF APPEALS**  
**TWELFTH COURT OF APPEALS DISTRICT OF TEXAS**  
**JUDGMENT**

**JULY 12, 2017**

**NO. 12-17-00218-CR**

**MICHAEL A. KENNEDY,**  
Relator  
V.  
**HON. MARK A. CALHOON,**  
Respondent

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**ORIGINAL PROCEEDING**

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ON THIS DAY came to be heard the petition for writ of mandamus filed by Michael A. Kennedy. Said petition for writ of mandamus having been filed herein on July 10, 2017, and the same having been duly considered, because it is the opinion of this Court that the writ should not issue, it is therefore CONSIDERED, ADJUDGED and ORDERED that the said petition for writ of mandamus be, and the same is, hereby **denied**.

By *per curiam* opinion.

*Panel consisted of Worthen, C.J., Hoyle, J. and Neeley, J.*