

NO. 12-17-00366-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

**MICHAEL KENNEDY,
APPELLANT**

§ **APPEAL FROM THE 3RD**

V.

§ **JUDICIAL DISTRICT COURT**

**JAMES T. WORTHEN, ET AL,
APPELLEES**

§ **ANDERSON COUNTY, TEXAS**

**MEMORANDUM OPINION
PER CURIAM**

This appeal is being dismissed for failure to comply with the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 42.3(c).

On November 27, 2017, the clerk of this Court notified Appellant that the filing fee in this appeal is due. *See* TEX. R. APP. P. 5. Appellant was informed that failure to remit the filing fee on or before December 7, would result in the Court's taking appropriate action, including dismissal of the case without further notice. *See* TEX. R. APP. P. 42.3(c). The date for remitting the filing fee has passed, and Appellant has not paid the filing fee or submitted a declaration of inability to pay costs, an inmate trust account statement, or an affidavit regarding previous filings. *See* TEX. R. APP. P. 20.1, *see also* TEX. CIV. PRAC. & REM. CODE ANN. §§ 14.002(a), 14.004 (West 2017); *In re Benjamin*, No. 09-17-00396-CV, 2017 WL 4974632, at *1, n.1 (Tex. App.—Beaumont Nov. 2, 2017, orig. proceeding).

Accordingly, because Appellant has failed, after notice, to comply with Rule 5, the appeal is *dismissed*. *See* TEX. R. APP. P. 42.3(c).¹ All pending motions are *overruled* as *moot*.²

¹ The notice of appeal identifies an illegible trial court cause number. The clerk of this Court has been unable to verify with Anderson County that there is a pending civil cause against this Court.

² One such motion is a motion to recuse the justices of this Court. Relator has filed multiple such motions in recent months. He claims to have filed a civil lawsuit against this Court in Anderson County. We first note that

Opinion delivered December 21, 2017.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)

Relator's motion fails to comply with the applicable rule regarding the contents of motions to recuse. *See* TEX. R. CIV. P. 18a. Additionally, the clerk of this Court contacted Anderson County and has been unable to verify that a pending lawsuit exists. Even so, the applicable rules governing recusal apply to judges in which the case is pending. *See* TEX. R. APP. P. 16.3. Until an appeal from a lawsuit is properly pending before this Court, there is nothing from which the Court may recuse itself. *See id.*



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

DECEMBER 21, 2017

NO. 12-17-00366-CV

MICHAEL KENNEDY,

Appellant

V.

JAMES T. WORTHEN, ET AL,

Appellees

Appeal from the 3rd District Court
of Anderson County, Texas (Tr.Ct.No. Unknown)

THIS CAUSE came on to be heard on the appellate record, and the same being considered, it is hereby ORDERED, ADJUDGED and DECREED by this Court that the appeal be **dismissed**, and that the decision be certified to the court below for observance.

By *per curiam* opinion.

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