



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-20-00032-CV

IN RE LARRY T. LONG, INDIVIDUALLY, ET AL.

Original Mandamus Proceeding

Before Morriss, C.J., Burgess and Stevens, JJ.
Opinion by Chief Justice Morriss

OPINION

On June 16, 2020, this Court denied a petition for writ of mandamus that complained of the trial court's oral rulings compelling a response to discovery requests from Relators Larry T. Long, individually, Woodbine Production Corporation, Rusk County Well Service, Inc., and Larry T. Long and L. Allan Long, in their capacities as trustees of The Lawrence Allan Long Trust, The Charles Edward Long Trust, The Larry Thomas Long Trust, and The John Stephen Long Trusts d/b/a THE LONG TRUSTS. *See In re Long*, No. 06-20-00017-CV, 2020 WL 3240330, at *1 (Tex. App.—Texarkana June 16, 2020, orig. proceeding) (mem. op.). The basis of our ruling was noncompliance with Rule 52.7(a)(1) of the Texas Rules of Appellate Procedure. *See id.* On June 17, 2020, Relators attempted to remedy this deficiency by affixing an affidavit to the mandamus record and re-filing their petition for writ of mandamus. Because the affidavit is insufficient, we again deny the petition for writ of mandamus based on noncompliance with 52.7(a)(1) of the Texas Rules of Appellate Procedure.¹

A relator must file with the petition “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[.]” TEX. R. APP. P. 52.7(a)(1); *see* TEX. R. APP. P. 52.3(k)(1)(A) (“The appendix must contain . . . a certified or sworn copy of any order complained of, or any other document showing the matter complained of.”). “Documents that are attached to a properly prepared affidavit are sworn copies,” while documents attached to an improperly prepared affidavit are not. *In re Henderson*, No. 06-15-00034-CR, 2015 WL 13522812, at *1 (Tex. App.—Texarkana Mar. 10, 2015, orig. proceeding)

¹The filing of additional defective verifications could result in sanctions.

(mem. op.) (citing *In re Butler*, 270 S.W.3d 757, 759 (Tex. App.—Dallas 2008, orig. proceeding)). “The affidavit ‘must affirmatively show it is based on the personal knowledge of the affiant’; the affidavit ‘is insufficient unless the statements in it are direct and unequivocal and perjury can be assigned to them.’” *Id.* (citing *Butler*, 270 S.W.3d at 759); see *In re Garrett*, No. 05-20-00462-CV, 2020 WL 2552892, at *1 n.1 (Tex. App.—Dallas May 20, 2020, orig. proceeding) (mem. op.) (an affidavit complies when it states, “under penalty of perjury, that the affiant has personal knowledge that the copies of the documents in the appendix are true and correct copies of the originals”).

Here, the affidavit filed by Relators did not contain any recitation that it was based on the personal knowledge of the affiant and instead simply stated, “Attached to this [r]ecord are true and correct copies of every document that is material to Relator’s claim for relief and was filed in the underlying proceeding.” This language is insufficient. See *In re Quintana*, No. 02-15-00305-CV, 2015 WL 6395639, at *2 (Tex. App.—Fort Worth Oct. 22, 2015, orig. proceeding) (mem. op.) (finding insufficient the recitation that “documents attached in the appendix are documents filed in this cause of action”); *Butler*, 270 S.W.3d at 758 (finding insufficient the recitation that “[t]he documents contained in the attached Record and attached Appendix to the Relators’ Petition for Writ of Mandamus are to my knowledge true and correct copies of the original documents”); see also *In re Gentry*, No. 05-20-00442-CV, 2020 WL 2519892, at *1 (Tex. App.—Dallas May 18, 2020, orig. proceeding) (mem. op.) (finding insufficient the recitation on a certification that the petition was “TRUE and CORRECT, to the best of my knowledge under the threat of perjury.”).

“Because the record in a mandamus proceeding is assembled by the parties,” we must “strictly enforce[] the authentication requirements of rule 52 to ensure the integrity of the mandamus record.” *In re Smith*, No. 05-19-00268-CV, 2019 WL 1305970, at *1 (Tex. App.—Dallas Mar. 22, 2019, orig. proceeding) (mem. op.) (quoting *In re McKinney*, No. 05-14-01513-CV, 2014 WL 7399301, at *1 (Tex. App.—Dallas Dec. 15, 2014, orig. proceeding) (mem. op.)). “It is the relator’s burden to provide this Court with a sufficient record to establish the right to mandamus relief.” *Henderson*, 2015 WL 13522812, at *2 (citing TEX. R. APP. P. 52.3(k)(1)(A), 52.7(a)(1)). Due to the insufficient affidavit, the documents attached to the affidavit are not sworn copies and, therefore, the record is inadequate to grant mandamus relief.

Accordingly, we deny the petition for writ of mandamus.²

Josh R. Morriss, III
Chief Justice

Date Submitted: July 7, 2020
Date Decided: July 8, 2020

²On June 17, 2020, this Court granted Relators’ motion for an emergency stay of the trial court’s orders compelling discovery. Because we deny the petition for writ of mandamus, the emergency stay is hereby lifted.