

DENIED and Opinion Filed May 26, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-20-00501-CV

IN RE DAVID LEE DANIELS III, Relator

**Original Proceeding from the 256th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-18-19199**

MEMORANDUM OPINION

**Before Chief Justice Burns and Justices Pedersen, III, and Carlyle
Opinion by Chief Justice Burns**

In this original proceeding, David Lee Daniels III has filed a petition for writ of mandamus and a petition for writ of habeas corpus both arising from the trial court's order finding him in contempt for failing to pay child support and committing him to jail.¹ We deny relief on both petitions.

¹ Relator has appealed separately the trial court's judgment in the underlying divorce case filed as cause no. 05-20-00428-CV styled *In the Interest of D.F.D. and T.Z.D., Children*. A copy of the order holding him in contempt appears in the clerk's record for that case. It shows relator has been held in criminal contempt and assessed a term of six months' confinement. He has also been held in civil contempt and ordered confined for eighteen months, including time served for criminal contempt, or until he pays arrearages of \$10,114.44 in child support, \$1,687.17 in medical support, and \$8,521.17 in attorney's fees and expenses. The trial court made a finding in its contempt order that relator has the ability to pay the arrearages.

A person filing a writ of mandamus or habeas corpus must certify that the person “has reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.” TEX. R. APP. P. 52.3(j). Relator’s petitions do not contain the required certification and thus do not comply with rule 52.3(j). *See In re Butler*, 270 S.W.3d 757, 758 (Tex. App.—Dallas 2008, orig. proceeding).

Furthermore, as the party seeking relief, relator bears the burden to provide the Court with a sufficient record to establish his right to relief. *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding). Rule 52.3(k)(1) requires relator to file an appendix to the petitions that contains “a certified or sworn copy of any order complained of, and any other document showing the matter complained of.” TEX. R. APP. P. 52.3(k)(1)(A). Rule 52.7(a) requires relator to file a record that contains “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 “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.” TEX. R. APP. P. 52.7(a).

Relator did not file any documents with his petition for writ of mandamus. The few documents he filed with his petition for writ of habeas corpus are neither certified documents nor sworn copies. Additionally, he did not file a reporter’s record from the contempt hearing or a statement that no testimony was taken. Thus,

relator has not complied with rules 52.3(k)(1)(A) and 52.7(a). *See Butler*, 270 S.W.3d at 758–59.

Regarding relator’s decision to file both mandamus and habeas petitions, we note that mandamus is not available to review confinement under an order of contempt. *See In re M.J.*, 227 S.W.3d 786, 793 (Tex. App.—Dallas 2006, pet denied) (orig. proceeding). The legality of relator’s confinement could only be reviewed through relator’s habeas petition. *Id.* To obtain habeas relief, however, relator must provide proof that he is confined. TEX. R. APP. P. 52.3(k)((1)(D); *In re Serrano*, 482 S.W.3d 134, 135 (Tex. App.—El Paso 2015, orig. proceeding). Relator has not provided any proof of confinement.

Because relator has not authenticated his petitions, has not provided a sufficient supporting record, and has not provided required proof of his confinement, we conclude he has not shown he is entitled to relief. *See Butler*, 270 S.W.3d at 758–59; *Serrano*, 482 S.W.3d at 135.

We deny relator’s petitions for writs of mandamus and habeas corpus.

/Robert D. Burns, III/
ROBERT D. BURNS, III
CHIEF JUSTICE

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