

TENTH COURT OF APPEALS OF TEXAS

Roger Martin, Individually and as Successor Trustee of the Martin Family Trust v. Dale Martin

No. 10-18-00279-CV (Tex. App.—Waco Nov. 21, 2018) · No. No. 10-18-00279-CV · Decided November 21, 2018

SUMMARY

The Tenth Court of Appeals of Texas dismissed Roger Martin’s appeal from a judgment for breach of fiduciary duty and his removal as successor trustee of the Martin Family Trust. The court dismissed the appeal under Texas Rule of Appellate Procedure 42.3(c) because Martin failed to file the required notice concerning mediation after being ordered to do so.

CASE DETAILS

COURT	Tenth Court of Appeals of Texas
WRITING FOR THE COURT	Per Curiam; Tom Gray, Chief Justice; Justice Davis; Justice Scoggins
JURISDICTION	Texas
DECIDED	November 21, 2018
DOCKET	No. 10-18-00279-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from a judgment of the 87th District Court of Freestone County, Texas, awarding judgment against Roger Martin for breach of fiduciary duty and removing him as successor trustee.
PRECEDENTIAL VALUE	published
PARTIES	Roger Martin, individually and as successor trustee of the Martin Family Trust v. Dale Martin

TOPICS

[appellate procedure](#) [trustee duties](#) [breach of trust](#) [civil procedure](#)

PRACTICE AREAS

[appellate procedure](#) [trusts](#) [fiduciary duty](#) [civil procedure](#)

QUESTIONS PRESENTED

1. Whether the appeal should be dismissed under Texas Rule of Appellate Procedure 42.3(c) because appellant failed to comply with the court's mediation-related notice orders.

HOLDINGS

1. The appeal must be dismissed because appellant failed to timely provide the notice required by the court's orders after being warned that noncompliance would result in dismissal.

KEY QUOTATIONS

“failure to timely provide the notice WILL result in the dismissal of this appeal without further notice.” (Page 2)

FACTUAL BACKGROUND

The underlying trial-court judgment was rendered against Roger Martin for breach of fiduciary duty and removed him as successor trustee of the Martin Family Trust. During the appeal, the court referred the matter to mediation and ordered Martin to provide notice concerning the selection of a mediator, but he failed to do so despite a second order and express warning of dismissal.

PROCEDURAL HISTORY

Roger Martin appealed the trial court's judgment for breach of fiduciary duty and his removal as successor trustee. At Martin's request, the court referred the appeal to mediation and ordered him to file notice identifying an agreed mediator or stating that the parties could not agree. After Martin failed to comply with the original order and a subsequent order warning that noncompliance would result in dismissal, the court dismissed the appeal.

DISPOSITION

dismissed

OPINION

PER CURIAM.

IN THE TENTH COURT OF APPEALS No. 10-18-00279-CV ROGER MARTIN, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE MARTIN FAMILY TRUST, Appellant v. DALE MARTIN, Appellee From the 87th District Court Freestone County, Texas Trial Court No. 11-136-A MEMORANDUM OPINION Appellant, Roger Martin, Individually and as Successor Trustee of the Martin Family Trust, appeals the trial court's judgment rendered against him for breach of fiduciary duty and removing him as successor trustee of the Martin Family Trust.

Per appellant's request, we referred this appeal to mediation on August 29, 2018. In the referral, the Court ordered the parties to confer and attempt to agree upon a mediator. Appellant was

ordered to file a notice with the Clerk of this Court, within 14 days from the date of the order, which either identified the agreed-upon mediator or stated that the parties were unable to agree upon a mediator.

No notice was filed. The Court then issued an order on October 24, 2018 directing appellant to provide this Court with the required notice within 14 days from the date of the order. The Court warned appellant that the “failure to timely provide the notice WILL result in the dismissal of this appeal without further notice.” More than 14 days have passed, and appellant has not provided the Court with the required notice.

Accordingly, this appeal is dismissed. See TEX. R. APP. P. 42.3(c) TOM GRAY Chief Justice Before Chief Justice Gray, Justice Davis, and Justice Scoggins Appeal dismissed Opinion delivered and filed November 21, 2018 [CV06] Martin v. Martin Page 2