

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS AT HOUSTON

Mary Lynn Kantara Gerke v. Jamil James Kantara

Kantara Gerke · No. 01-14-00082-CV · Decided January 22, 2015

SUMMARY

This document is a pro se appellant's motion in a Texas intermediate appellate court requesting that the appellant's attorney be ordered to rebrief the case to expressly challenge trial-court findings that the underlying suit was frivolous and brought for purposes of harassment. In the alternative, the appellant asks the court to treat the motion as a supplemental request to the existing brief.

CASE DETAILS

COURT	Court of Appeals for the First District of Texas at Houston
JURISDICTION	Texas
DECIDED	January 22, 2015
DOCKET	01-14-00082-CV
PROCEDURAL POSTURE	Appellant, proceeding pro se, filed a motion asking the appellate court to order her appointed attorney to rebrief the appeal to expressly request vacatur of trial-court findings that her suit was frivolous and brought for purposes of harassment. In the alternative, she requested that the motion be treated as a supplemental request to her attorney's brief.
PRECEDENTIAL VALUE	none
PARTIES	Mary Lynn Kantara Gerke v. Jamil James Kantara

TOPICS

appellate procedure family law procedure civil procedure

PRACTICE AREAS

appellate procedure family law civil procedure

QUESTIONS PRESENTED

- Whether the appellate court should order appellant's attorney to resubmit or amend the appellate brief to expressly request vacatur of the trial court's findings that appellant's suit was frivolous and brought for purposes of harassment.

2. Whether the court should accept appellant's motion as a supplemental request to the attorney's previously filed brief.

FACTUAL BACKGROUND

The motion concerns trial-court findings that Mary Lynn Kantara Gerke's suit was frivolous and brought for purposes of harassment. Appellant contended that her appellate counsel had already presented arguments challenging those findings but omitted an express request for relief in the brief's conclusion and prayer. She asserted that appellee had addressed the issue in a reply brief and would not be harmed by allowing rebriefing or supplementation.

PROCEDURAL HISTORY

The motion states that the appeal was pending in the First Court of Appeals and that appellant's attorney filed an appellate brief on January 9, 2015, which the court accepted on January 12, 2015. Appellant asserted that the brief argued the frivolousness and harassment findings but did not expressly request their vacatur. The document contains no appellate ruling or disposition on the motion.

OPINION

PER CURIAM.

FILED IN 1ST COURT OF APPEALS HOUSTON, TEXAS NO. 01-14-00082-CV JAN %2 2015
IN THE COURT OF APPEALS CHRISTOPHEB A PBJNE rrOPHEBAPR» CLERK FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON, TEXAS MARY LYNN KANTARA GERKE v.
JAMIL JAMES KANTARA APPELLANT'S MOTION REQUESTING THE COURT TO
ORDER APPELLANT'S ATTORNEY TO REBRIEF HER CASE TO THE HONORABLE
COURT OF APPEALS: Comes now, Mary Lynn Kantara Gerke, pro se, and asks this Honorable
Court to order appellant's attorney to resubmit her brief to include a specific request within her
conclusion and prayer, that the trial court's findings that Ms. Kantara Gerke's case was frivolous
and for the purposes of harassment be voided and in support would show: 1.

This issue is^; clearly spelled out within appellant's First Supplemental Request For Partial
Record And Statement Of The Issues filed October 24, 2014 (3rd Supplemental Clerk's Record,
Page 46) 2. Ms. Tomlinson filed a brief in this case on January 9, 2015 which was accepted on
January 12, 2015. Within the brief, she failed to include a specific request within her conclusion
and prayer, seeking to void the trial court's findings that Ms. Kantara Gerke's case was frivolous
and for the purposes of harassment.

3. Ms. Kantara Gerke's is unsure why this was omitted, but there have been concerns related to
Ms. Tomlinson's desire to withdraw from this case. Ms. Kantara Gerke believes she had made it
clear to her attorney that this issue was important to her and should be included. Ms. Kantara
Gerke is not an attorney and wants to be sure she does not lose an issue, important to her, on a
technical error.

4. Ms. Tomlinson has already made the arguments to support the request that the findings of frivolous and harassment should be voided. (Issue #2, Section B of her brief) 5. Ms. Kantara Gerke believes the additional request is important, meritorious and not frivolous in nature and deserves to be included in the interest of justice and for the welfare of the children.

6. Appellant's attorney will be only minimally burdened by the granting of this request, because the requested change can be added and the document resubmitted electronically. While not an attorney, Ms. Kantara Gerke believes the arguments on the issue are already presented within the brief Ms. Tomlinson filed. 7. Appellee will not be harmed by the granting of this motion, because appellee has submitted a reply brief and addressed this issue directly. {Jamil "James " Kantara's Reply Brief filed January 7, 2015, pages 36-39) 8.

Ms. Kantara Gerke believes this Honorable Court has authority to grant this motion under TRAP in particularly TRAP 38.9(b). Mary Lynn Kantara Gerke asks this Honorable Court to order Ms. Tomlinson to resubmit her brief in this case to include an explicit request within her conclusion and prayer, concerning the voiding of the findings of frivolous and harassment.

In the alternative, Mary Lynn Kantara Gerke respectfully requests that this Honorable Court accept this motion by Ms. Kantara Gerke as a supplemental request to Ms. Tomlinson's filed brief that in addition to the conclusion and prayer already filed, that "Mary Lynn Kantara Gerke requests that this Honorable Court vacate the findings that Mary Lynn Kantara Gerke's suit was frivolous and for the purposes of harassment and that said findings are void", Ms. Kantara Gerke asks for any other relief she may be entitled to in law or in equity. -3- Respectfully submitted, Mary Lynn Kantara Gerke, pro se 707 Almond Pointe League City, TX 77573 Tel: (281) 332-8858 Fax:(281)290-0004
CERTIFICATE OF SERVICE On January 20, 2015 a copy of APPELLANT'S MOTION REQUESTING THE COURT TO ORDER APPELLANT'S ATTORNEY TO REBRIEF HER CASE was served, in compliance with Texas Rules of Appellate Procedure 9.5 and 25.1(e), on the following in the manner listed below: Mary Lynn Kantara Gerke, pro se 707 Almond Pointe League City, TX 77573 Tel: (281) 332-8858 Fax:(281)290-0004 Ashley V. Tomlinson, Attorney At Law Viafax 1800 St. James Place, Suite 620 Houston, Texas 77056 Phone: (713)600-1717 Fax: (713)600-1718 Mr. Wilfred Schmitz, Attorney At Law Viafax 17040 El Camino Real, Suite 400 Houston, Texas 77058 Attorney of record for Mr. Kantara Phone: (281)486-5066 Fax: (281)486-2041 Honorable Christopher A. Prine, Clerk of the Court By Mail First Court of Appeals 301 Fannin Street Houston, Texas 77002-2066 USPS TRACKING NUMBER U.S. POSTAGE *\$5.75 Expected Delivery PM 1-DAY 77573 0006 01/21/2015 C Date of mailing 801/20/15 a 06 2S00 S08349756 9505 5000 1983 5020 0007 18 RECEIVED FIRST COURT OF APPEALS HOUSTON, TEXAS JAN 22 2015 CHRISTOPHER A. PRINE WW i**f~ <JU&\&o\^-oooBz~tsJ r

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