

## COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

### Syed Rahman and Sabrina Rahman v. Charlene N. Foster

No. 05-16-01042-CV · No. 05-16-01042-CV · Decided December 13, 2016

#### SUMMARY

The Court of Appeals for the Fifth District of Texas orders the Collin County District Clerk to notify the appellants of the cost of preparing the clerk's record and to file documentation of that amount. The order addresses the overdue clerk's record and explains the clerk's obligations under Texas Rules of Appellate Procedure 34.5 and 35.3.

#### CASE DETAILS

|                       |                                                                                          |
|-----------------------|------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of Texas, Fifth District at Dallas                                      |
| WRITING FOR THE COURT | Elizabeth Lang-Miers                                                                     |
| JURISDICTION          | Texas                                                                                    |
| DECIDED               | December 13, 2016                                                                        |
| DOCKET                | 05-16-01042-CV                                                                           |
| DISPOSITION           | other                                                                                    |
| PROCEDURAL POSTURE    | Appellate administrative order addressing an overdue clerk's record in a pending appeal. |
| PRECEDENTIAL VALUE    | Published                                                                                |
| PARTIES               | Syed Rahman, Sabrina Rahman v. Charlene N. Foster                                        |

#### TOPICS

appellate procedure

civil procedure

#### PRACTICE AREAS

appellate procedure

civil procedure

#### QUESTIONS PRESENTED

1. What obligations does the trial court clerk have to compile, certify, and file the clerk's record in an appeal?
2. What action was required to address the overdue clerk's record and ensure that appellants were notified of the cost of preparing it?

## HOLDINGS

1. The trial court clerk is required to compile, certify, and file the clerk's record, including the documents required by Texas Rule of Appellate Procedure 34.5(a).
2. The Collin County District Clerk was ordered to notify appellants within five days of the cost to prepare a clerk's record containing the items required by Rule 34.5(a), and to file written documentation of the amount due within ten days.

## KEY QUOTATIONS

*"The trial court clerk is required by Texas Rule of Appellate Procedure 35.3(a) to compile, certify, and file the clerk's record."* (Order)

*"Accordingly, we ORDER the Collin County District Clerk to notify appellants of the cost to prepare a Clerk's Record that includes the items required by rule 34.5(a) of the Texas Rules of Appellate Procedure within FIVE DAYS of the date of this order."* (Order)

## FACTUAL BACKGROUND

The clerk's record in the appeal was overdue. The Collin County District Clerk had informed the appellate court that the clerk's office did not calculate the cost of the record until an appellant filed a designation of clerk's record. Appellants reported that they had not filed the requested paperwork because they did not understand what to file.

## PROCEDURAL HISTORY

The appeal was taken from the 219th Judicial District Court of Collin County, Texas. After the clerk's record remained overdue, the court of appeals ordered the Collin County District Clerk to file the record or documentation showing that appellants had been notified of the amount due. The district clerk reported that costs were not calculated until appellants filed a designation of clerk's record, and appellants stated that they did not understand what to file. The court then ordered the district clerk to notify appellants of the cost of preparing a record containing the items required by Texas Rule of Appellate Procedure 34.5(a) and to file written documentation of the amount due.

## DISPOSITION

other

## OPINION

PER CURIAM.

Order entered December 13, 2016 In The Court of Appeals Fifth District of Texas at Dallas No. 05-16-01042-CV SYED RAHMAN AND SABRINA RAHMAN, Appellant V. CHARLENE N. FOSTER, Appellee On Appeal from the 219th Judicial District Court Collin County, Texas Trial Court Cause No. 219-03078-2015 ORDER The clerk's record in this case remains overdue.

On November 4, 2016, we ordered the Collin County District Clerk to file with this Court either the Clerk's Record or written documentation of notification to appellants of the amount due for the clerk's record. In a letter dated November 10, 2016, the district clerk informed this Court that the District Clerk's Office does not calculate the costs of a clerk's record until after the appellant files a Designation of Clerk's Record.

Appellants have now informed the Court that they have not filed "the paper works [sic]" with the district court because appellants do not understand what to file. The trial court clerk is required by Texas Rule of Appellate Procedure 35.3(a) to compile, certify, and file the clerk's record. TEX. R. APP. P. 35.3(a). Rule 34.5(a) lists documents that the trial court clerk must include in the record, and rule 34.5(b) provides that a party may request that additional items be included in the record.

TEX. R. APP. P. 34.5(a),(b). Accordingly, we ORDER the Collin County District Clerk to notify appellants of the cost to prepare a Clerk's Record that includes the items required by rule 34.5(a) of the Texas Rules of Appellate Procedure within FIVE DAYS of the date of this order.

We further ORDER the Collin County District Clerk to file, within TEN DAYS of the date of this order, written documentation to appellants of the amount due for the clerk's record. We DIRECT the Clerk of the Court to send a copy of this order to Collin County District Clerk Lynne Finley and to all Parties. /s/ ELIZABETH LANG-MIERS JUSTICE