

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

Kathy Wilburn v. Gabrielle Coleman

Wilburn v. Coleman, No. 05-17-00212-CV (Tex. App.—Dallas Oct. 25, 2017) · No. No. 05-17-00212-CV ·
Decided October 25, 2017

SUMMARY

The Texas Court of Appeals, Fifth District at Dallas, granted the appellant's motion to correct a potential inaccuracy in the reporter's record. The court abated the appeal and ordered the trial court to conduct a hearing, make findings regarding the alleged inaccuracy, and submit supplemental records and any certified corrections.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	Carolyn Wright, Chief Justice
JURISDICTION	Texas
DECIDED	October 25, 2017
DOCKET	No. 05-17-00212-CV
DISPOSITION	other
PROCEDURAL POSTURE	During an appeal from the County Court at Law No. 2 of Dallas County, the pro se appellant moved to correct an alleged inaccuracy in the reporter's record.
PRECEDENTIAL VALUE	Published
PARTIES	Kathy Wilburn v. Gabrielle Coleman

TOPICS

- appellate procedure
- civil procedure

PRACTICE AREAS

- appellate procedure
- civil procedure

QUESTIONS PRESENTED

- Whether the appellant's pro se letter should be construed as a motion to correct an inaccuracy in the reporter's record.

2. What procedure should be followed under Texas Rule of Appellate Procedure 34.6(e) when the accuracy of the reporter's record is disputed.

HOLDINGS

1. The appellant's pro se letter was properly construed as a motion to correct an alleged inaccuracy in the reporter's record.
2. When the accuracy of the reporter's record is disputed, the trial court must conduct a hearing and make written findings regarding whether the parties agree that the record is inaccurate and how it should be corrected; if they do not agree, the trial court must determine whether an inaccuracy exists and, if so, the appropriate correction.

KEY QUOTATIONS

“If the parties cannot agree, the trial court shall make findings of fact as to whether there is any inaccuracy and, if an inaccuracy exists, the correction.” (Order)

“We ABATE this appeal to allow the trial court to comply with this order.” (Order)

FACTUAL BACKGROUND

The appellant alleged that the reporter's record contained conflicting or inaccurate statements concerning whether the appellee took a promissory note home and placed it in a dresser drawer or took it to work, where it was allegedly stolen. The appellate court determined that the allegation required proceedings in the trial court to establish whether the record was inaccurate and, if so, how it should be corrected.

PROCEDURAL HISTORY

The appeal was pending from the County Court at Law No. 2, Dallas County, Texas. The appellant asserted that the reporter's record inaccurately recited where the appellee said a promissory note had been stolen. The Court of Appeals construed the letter as a motion to correct the reporter's record, ordered the trial court to conduct a hearing and make written findings, and abated the appeal pending supplementation of the record.

DISPOSITION

other

REMAND INSTRUCTIONS

The appeal was abated. Within twenty days, Judge King Fifer was ordered to conduct a hearing and make written findings concerning whether the parties agreed that the reporter's record contained an inaccuracy and how to correct it. If the parties could not agree, the trial court was required to determine whether an inaccuracy existed and, if so, the correction; if an inaccuracy was found, the trial court was to order the court reporter to conform the record and file certified corrections. The Dallas County Clerk was ordered to file a supplemental clerk's record within thirty days, and the official court reporter was ordered to file the hearing reporter's record

within forty days. The appeal was to be reinstated thirty-five days after the order or upon filing of the supplemental clerk's record, whichever occurred earlier.

OPINION

PER CURIAM.

Order entered October 25, 2017 In The Court of Appeals Fifth District of Texas at Dallas No. 05-17-00212-CV KATHY WILBURN, Appellant V. GABRIELLE COLEMAN, Appellee On Appeal from the County Court at Law No. 2 Dallas County, Texas Trial Court Cause No. CC-16-05667-B ORDER Before the Court is appellant's pro se letter asserting the reporter's record contains an error.

Appellant asserts the reporter's record reflects that appellee said "she took the promissory note that she wrote and signed home and put it in her dresser drawer and it was stolen, but in court she stated that she took the promissory note to her job and it was stolen out of her drawer at work." We construe appellant's letter as a motion to correct an inaccuracy in the reporter's record.

We GRANT the motion to the extent that we order the Honorable King Fifer, Judge of County Court at Law No. 2, to conduct a hearing, within TWENTY DAYS of the date of this order, and make written findings of fact as to whether the parties agree the reporter's record contains an inaccuracy and how to correct it. If the parties cannot agree, the trial court shall make findings of fact as to whether there is any inaccuracy and, if an inaccuracy exists, the correction.

If the trial court finds the record is inaccurate, the trial court shall order the court reporter to conform the reporter's record to what occurred in the trial court and file certified corrections in this Court. See TEX. R. APP. P. 34.6(e)(1), (2).

We ORDER Dallas County Clerk John Warren to file, within THIRTY DAYS, of the date of this order, a supplemental clerk's record containing the trial court's written findings, any supporting documentation, and any orders, to this Court.

We ORDER Lanetta Williams, Official Court Reporter for County Court at Law No. 2, to file, within FORTY DAYS of the date of this order, a reporter's record of the hearing. We DIRECT the Clerk of this Court to send a copy of this order to Judge Fifer, Mr. Warren, Ms. Williams, and all parties.

We ABATE this appeal to allow the trial court to comply with this order. The appeal will be reinstated thirty-five days from the date of this order or when the supplemental clerk's record is filed, whichever occurs earlier. /s/ CAROLYN WRIGHT CHIEF JUSTICE