

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

Linda K. McCrary v. Eustolia P. Rios and Leonardo M. Rios

McCrary v. Rios · No. 05-18-01395-CV · Decided January 28, 2019

SUMMARY

The Texas Court of Appeals for the Fifth District at Dallas addressed the appellant's motion concerning the trial process, judgment, security deposit, and funds in the court registry. The court ordered the appeal submitted without the reporter's record because the appellant failed to request it or verify that it had been requested, ordered her to file a compliant merits brief by February 28, 2019, and denied the motion without prejudice.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	Erin A. Nowell
JURISDICTION	Texas
DECIDED	January 28, 2019
DOCKET	05-18-01395-CV
DISPOSITION	other
PROCEDURAL POSTURE	Appellant filed a motion challenging the trial process and judgment while her appellate brief was not yet due and before the reporter's record had been prepared. The court ordered the appeal submitted without the reporter's record, directed appellant to file her merits brief by February 28, 2019, and denied the motion without prejudice.
PRECEDENTIAL VALUE	Published
PARTIES	Linda K. McCrary v. Eustolia P. Rios, Leonardo M. Rios

TOPICS

appellate procedure

civil procedure

PRACTICE AREAS

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the appeal should be submitted without the reporter's record after appellant failed to request the record or verify that she had done so.
2. Whether appellant's motion challenging the trial process and judgment should be treated as her merits brief even though the brief was not yet due.

HOLDINGS

1. Because appellant failed to verify that she had requested preparation of the reporter's record after being directed to do so, the court ordered the appeal submitted without the reporter's record pursuant to Texas Rule of Appellate Procedure 37.3(c).
2. The court declined to treat appellant's motion as her merits brief because the brief was not yet due, denied the motion without prejudice, and directed appellant to raise the same arguments in a compliant merits brief.

FACTUAL BACKGROUND

The appeal concerns appellant's complaint about the trial process and judgment, including a request for return of her security deposit and withdrawal of funds from the court registry. The clerk's record had been filed, but the reporter's record had not been requested, and appellant did not comply with the appellate court's directive to verify that she had requested its preparation.

PROCEDURAL HISTORY

The appeal was taken from the County Court at Law No. 1 of Hunt County, Texas, in trial court cause number CC1800388. The clerk's record had been filed, but the reporter's record had not been requested; after appellant failed to verify that she had requested its preparation, the court ordered the appeal submitted without that record and set a briefing deadline.

DISPOSITION

other

OPINION

PER CURIAM.

Order entered January 28, 2019 In The Court of Appeals Fifth District of Texas at Dallas No. 05-18-01395-CV LINDA K. MCCRARY, Appellant V. EUSTOLIA P. RIOS AND LEONARDO M. RIOS, Appellees On Appeal from the County Court at Law No. 1 Hunt County, Texas Trial Court Cause No. CC1800388 ORDER Before the Court is appellant's January 24, 2019 motion in which she complains of the trial process and judgment and seeks, among other relief, return of her security deposit and to withdraw funds from the registry of the Court.

The motion could be construed as appellant's brief on the merits. However, the brief is not yet due. While the clerk's record has been filed, the reporter's record has not. By letter dated January 3,

2019, court reporter Cher Bench informed the Court the record had not been requested. That same day, we directed appellant to file, within ten days, written verification she had requested preparation of the reporter's record and cautioned her that failure to comply could result in the appeal being submitted without the record.

See TEX. R. APP. P. 37.3(c). To date, appellant has not complied. Accordingly, we ORDER the appeal submitted without the reporter's record and further ORDER appellant to file her brief on the merits no later than February 28, 2019.

The brief shall comply with the requirements of Texas Rules of Appellate Procedure 9 and 38.1. See TEX. R. APP. P. 9, 38.1. We DENY appellant's motion without prejudice to appellant raising the same arguments in her brief on the merits. /s/ ERIN A. NOWELL JUSTICE