

COURT OF APPEALS OF TEXAS, WACO

Navasota Resources, L.P. v. First Source Texas, Inc.

339 S.W.3d 141 (Tex. App.—Waco 2009) · No. No. 10-06-00236-CV · Decided August 5, 2009

SUMMARY

In this dissent to an order, Chief Justice Tom Gray argues that the Texas Court of Appeals lacked authority to order the return of original documents filed under seal after its plenary power had expired. He contends that the governing appellate rules and statutes assign custody and withdrawal of court papers to the clerk and require an appropriate trial-court order under Texas Rule of Appellate Procedure 34.5(f).

CASE DETAILS

COURT	Court of Appeals of Texas, Waco
WRITING FOR THE COURT	Tom Gray, Chief Justice
JURISDICTION	Texas
DECIDED	August 5, 2009
DOCKET	No. 10-06-00236-CV
DISPOSITION	other
PROCEDURAL POSTURE	Dissent from an appellate-court order granting a motion to return original documents filed under seal as part of the clerk's record after the court's plenary power had expired.
PRECEDENTIAL VALUE	Published dissenting opinion; the dissent is not binding precedent.
PARTIES	Navasota Resources, L.P. v. First Source Texas, Inc., First Source Gas, LP, Gastar Exploration Texas, LLC f/k/a Bossier Basin, LLC, First Texas Gas, LP, First Source Bossier LLC, Gastar Exploration, Ltd., Chesapeake Energy Corp., Chesapeake Exploration LP, Chesapeake Operating, Inc.

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Court of Appeals had authority, after expiration of its plenary power, to order the return of original documents filed under seal as part of the appellate record.
2. Whether the appellate court could direct its clerk to return the documents without a trial-court order specifying their return under Texas Rule of Appellate Procedure 34.5(f).

KEY QUOTATIONS

“Because we do not have inherent power to act contrary to the rules and statutes, because the trial court has jurisdiction of this matter on remand, because we have no plenary power to take this action, because the trial court originally failed to order the return of the items, because we failed to correct the trial court's error, and because this Court's Clerk would violate the Clerk's duties by allowing removal of the documents, we should simply explain this to the parties and ask them to ask the trial court to "make an order" providing for the return of the original documents, thus complying with Rule 34.5(f).” (143)

“Because the Court acts without authority to do so, I dissent.” (143)

FACTUAL BACKGROUND

Original documents had been filed under seal as part of the appellate clerk's record. The documents had been received pursuant to a trial-court order under Texas Rule of Appellate Procedure 34.5(f), but that order did not direct their return. The appellate court's plenary power had expired more than a year earlier when it granted a motion to return the documents.

PROCEDURAL HISTORY

The documents were transmitted from the trial court pursuant to Texas Rule of Appellate Procedure 34.5(f), but the trial court's order did not specify their return. After the appellate court's plenary power expired, the majority granted a motion directing the return of some original sealed documents. Chief Justice Gray dissented, asserting that the appellate court lacked authority to act and that the parties should instead obtain a clarifying order from the trial court.

DISPOSITION

other

REMAND INSTRUCTIONS

The dissent would have explained the lack of appellate authority to the parties and directed them to ask the trial court to make an order providing for return of the original documents in compliance with Texas Rule of Appellate Procedure 34.5(f).

CASES CITED

- Navasota Res., L.P. v. First Source Tex., Inc., 249 S.W.3d 526 (Tex. App.—Waco 2008, pet. denied)

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