

COURT OF APPEALS OF TEXAS, SEVENTH DISTRICT AT AMARILLO

Benjamin Allen Benge v. Robert N. Harris and Kari L. Imler-Harris

Benge · No. No. 07-13-0064-CV · Decided March 19, 2013

SUMMARY

The Texas Seventh Court of Appeals abated and remanded an accelerated parental-rights termination appeal because the reporter’s record was past due and the appellant’s indigency status required trial-court determination. The trial court was directed to determine whether the appellant was entitled to a free reporter’s record and to facilitate filing of the appellate record or make supporting findings and conclusions.

CASE DETAILS

COURT	Court of Appeals of Texas, Seventh District at Amarillo
WRITING FOR THE COURT	Per Curiam; Quinn, C.J.; Campbell, J.; Pirtle, J.
JURISDICTION	Texas
DECIDED	March 19, 2013
DOCKET	No. 07-13-0064-CV
DISPOSITION	remanded
PROCEDURAL POSTURE	Appellant appealed an order terminating his parental rights. The appellate record was incomplete because the court reporter had not prepared the reporter's record, allegedly because appellant had not paid or arranged to pay for it.
PRECEDENTIAL VALUE	Published
PARTIES	Benjamin Allen Benge v. Robert N. Harris, Kari L. Imler-Harris

TOPICS

- termination of parental rights
- parental rights
- appellate procedure
- family law procedure
- civil procedure

PRACTICE AREAS

- family law
- appellate procedure
- parental rights
- termination of parental rights

QUESTIONS PRESENTED

1. Whether the appeal should be abated and remanded because the reporter's record was past due and the court reporter had not prepared it.
2. Whether the trial court must determine whether appellant was entitled to a free reporter's record based on his affidavits of indigency.
3. Whether the court reporter's contest to appellant's affidavit of indigency was timely.

HOLDINGS

1. A contest to an affidavit of indigency must be filed within ten days after the affidavit is filed in the trial court; an untimely contest cannot prevent the affidavit from being deemed true under the applicable appellate rule.
2. When the reporter's record in an accelerated parental-termination appeal is past due and the available extension period has elapsed, the appellate court may abate the appeal and remand to the trial court to determine entitlement to a free reporter's record and ensure preparation and filing of the record.

KEY QUOTATIONS

“Unless a contest is timely filed, an affidavit of indigency shall be deemed true, and the party allowed to proceed without the advancement of costs.” (2)

“Because the reporter’s record is currently past due and any extension this Court could grant pursuant to Rule 28.4(b)(2) would have already elapsed, we abate this appeal and remand the cause to the trial court for further proceedings.” (2)

FACTUAL BACKGROUND

The trial court terminated Bengé's parental rights to his child, identified in the opinion by initials as A.M.I-H. Bengé filed multiple affidavits of indigency, while the court reporter filed a contest asserting that Bengé had not paid or arranged to pay for the reporter's record. The reporter's record was past due in the accelerated parental-rights appeal.

PROCEDURAL HISTORY

Appellees filed a petition to terminate Benjamin Allen Bengé's parental rights on May 11, 2012. The trial court signed an order of termination on October 23, 2012, and Bengé timely filed a notice of appeal on November 13, 2012. During the accelerated appeal, the court reporter asserted that the reporter's record could not be filed because Bengé had not paid for it; the appellate court abated the appeal and remanded to the trial court to determine Bengé's entitlement to a free reporter's record and to facilitate preparation and filing of the appellate record.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The trial court was directed to use whatever means available to determine whether Bengé was entitled to a free reporter's record and, if so, ensure that the appellate record was filed by April 2, 2013, including by ordering the court reporter to begin preparation immediately and arranging for a substitute reporter if necessary. The court reporter was ordered to notify the trial court in writing when the reporter's record was filed. If the record was timely filed, the trial court was to cause a supplemental clerk's record containing the court's order and the reporter's notice to be filed by April 9, 2013. If the trial court determined that Bengé was not entitled to a free reporter's record, it was to file findings of fact and conclusions of law by April 2, 2013, and a supplemental clerk's record containing them by April 9, 2013.

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