

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS AT HOUSTON

Michael Francis Palma v. Houston Independent School District and Linebarger, Goggan, Blair and Sampson, LLP

Palma · No. 01-07-00898-CV · Decided November 5, 2012

SUMMARY

The First Court of Appeals for the First District of Texas at Houston denies appellant Michael Francis Palma's motion to complete the appellate record. The court concludes that the requested documents were not required components of the clerk's record, had not been properly designated, and that no additional reporter's records existed for the hearings at issue. The court also states that the appellee's brief remained due on November 9, 2012.

CASE DETAILS

COURT	Court of Appeals for the First District of Texas at Houston
WRITING FOR THE COURT	Justice James Sharp, Jr.
JURISDICTION	Texas
DECIDED	November 5, 2012
DOCKET	01-07-00898-CV
DISPOSITION	other
PROCEDURAL POSTURE	Appellant moved in the court of appeals to complete or supplement the appellate record with additional reporter's-record transcripts and clerk's-record documents.
PRECEDENTIAL VALUE	published
PARTIES	Michael Francis Palma v. Houston Independent School District, for itself and on behalf of Harris County Educational District, Linebarger, Goggan, Blair and Sampson, LLP

TOPICS

appellate procedure

civil procedure

PRACTICE AREAS

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the appellate record should be supplemented with transcripts from hearings for which the court reporter confirmed that no reporter's record existed.
2. Whether the clerk's record should be supplemented with documents that were not required under Texas Rule of Appellate Procedure 34.5(a) and had not been properly designated for inclusion.

HOLDINGS

1. The court denied appellant's request to supplement the reporter's record because the court reporter confirmed that no records existed for the requested hearings, leaving no additional reporter's records with which the appellate record could be supplemented.
2. The court denied supplementation of the clerk's record because the requested documents did not fall within the documents required by Rule 34.5(a)(1)-(12), and appellant had not shown that he had designated the documents for inclusion or requested a supplemental clerk's record as required by Rule 34.5(a)(13) and (c)(1).

KEY QUOTATIONS

“Accordingly, we DENY appellant’s “Motion . . . for a Complete Record.””

FACTUAL BACKGROUND

Appellant sought transcripts from January 12 and February 2, 2007, asserting that the court reporter had been present, but the reporter informed the appellate court that no records existed for those dates. He also sought supplementation of the clerk's record with various documents and exhibits. The court determined that most requested documents were not among those required for inclusion under Texas Rule of Appellate Procedure 34.5(a), that appellant had not shown proper designation or a request for a supplemental record, and that one amended answer had been superseded before trial.

PROCEDURAL HISTORY

The appeal arose from proceedings in the 61st District Court of Harris County, trial court cause number 2006-14382. After appellant filed an earlier motion to complete the record, the court of appeals dismissed that motion as moot because appellant had already filed his brief and because Texas Rules of Appellate Procedure 34.5(c) and 34.6(d) permit a party to direct supplementation without a court order. Appellant filed a second motion on October 30, 2012, which the court denied because the requested clerk's-record materials were not documents required under Rule 34.5(a)(1)-(12), had not been properly designated, and the court reporter confirmed that no reporter's records existed for the requested hearings.

DISPOSITION

other

OPINION

PER CURIAM.

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS AT HOUSTON ORDER
Appellate case name: Michael Francis Palma v. Houston Independent School District, for itself
and on behalf of Harris County Educational District Appellate case number: 01-07-00898-CV
Trial court case number: 2006-14382 Trial court: 61st District Court of Harris County On
September 10, 2012, appellant filed a “Motion to Have the Record Completed.” In his motion,
appellant requested that the reporter’s record be completed by inclusion of transcripts from
January 12, 2007 and February 2, 2007, for which the court reporter “was present” “[t]o the best of
[appellant’s] recollection.” Appellant also requested supplementation of the clerk’s record and
included a list of “some of the documents that are missing,” consisting of a number of documents
and “missing exhibits” MP1 through MP16, MP16A through MP16F, MP17 through MP22, and
MP22A.

On September 11, 2012, the court reporter filed an information sheet informing this Court that no
reporter’s record exists for January 12, 2007 or February 2, 2007. On October 18, 2012, we
dismissed appellant’s motion as moot, because appellant had already filed his brief and because
rules 34.5(c) and 34.6(d) allow any party to direct the trial court clerk or court reporter to
supplement their respective records without necessity of a court order.

See TEX. R. APP. P. 34.5(c)(1), 34.6(d). On October 30, 2012, appellant filed another motion in
this Court, ostensibly directed to the Supreme Court of Texas, requesting that the record be
completed. In his motion, appellant states that the “court reporter was notified BOTH [sic] by
telephone AND [sic] by sending him via email the motion to include the above dates in the record”
and that “[a]s to notifying the clerk, appellant did include in his Appendices’ [sic], as stated above,
some of the documents that were missing from the court record showing conclusively that the
record was incomplete and are also included herein.” The documents appellant complains of as
missing from the clerk’s record do not fall within rule 34.5(a)(1) through 34.5(a)(12).

1 Therefore, to be included in the clerk’s record, the 1 Appellant does request one notice of appeal
and one request for findings of fact and conclusions of law. See TEX. R. APP. P. 34.5(a)(6), (7).
However, the requested notice of documents would have to be designated by a party to the
proceedings for inclusion in the clerk’s record. See TEX. R. APP. P. 34.5(a)(13).

To date, appellant has not shown that he ever designated the enumerated documents for inclusion
in the original clerk’s record or requested a supplemental clerk’s record containing said
documents. 2 See TEX. R. APP. P. 34.5(a)(13), (c)(1). Further, the court reporter has informed this
Court that there is no record of the hearings for which appellant seeks the transcripts, and appellant
himself, in the “Motion to Have the Record Completed,” stated only that, “to the best of
[appellant’s] recollection,” the court reporter was present.

Thus, there are no additional reporter's records with which the appellate record could be supplemented. See TEX. GOV'T CODE ANN. § 52.046(a) (West 2005); see also TEX. R. APP. P. 34.6(f). Accordingly, we DENY appellant's "Motion... for a Complete Record." Appellee's brief, if any, remains due November 9, 2012. See TEX. R. APP. P. 38.6(b). Judge's signature: /s/ Justice James Sharp, Jr. Acting individually Acting for the Court Date: November 5, 2012 appeal is from an interlocutory order and the notice of appeal from the final judgment appears in the record, and the request for findings of fact and conclusions of law pertains to a "Tax Master's recommendation" that has not been designated for inclusion in the record.

In addition, the August 1, 2007 "HISD First amended answer to Counterclaimants First Amended Petition" was not a live pleading at the time of the trial, as it had been superseded by a second amended answer. See TEX. R. APP. P. 34.5(a)(1).

Accordingly, these documents are not documents required to be included in the record by Rule 34.5(a)(1), (6), or (7).² The only document filed with this Court showing a request for documents to be included in the clerk's record was filed by appellant on October 15, 2007 and shows that appellant only requested the following: the first amended petition; the September 21, 2007 judgment; the October 15, 2007 notice of appeal; the October 15, 2007 affidavit of indigence; the request for preparation of the reporter's record; the request for preparation of the clerk's record; the docket sheet; the bill of costs; the court's charge; and the jury's verdict.