

FOURTEENTH COURT OF APPEALS OF TEXAS

Kristofer Thomas Kastner v. The Kroger Co., Ann Potter and Melinda Coombs

Kastner · No. No. 14-11-00445-CV · Decided October 13, 2011

SUMMARY

The Fourteenth Court of Appeals addresses an appeal in which the appellant sought to proceed without advance payment of costs. Because the trial court did not timely rule on the contest to the appellant's affidavit of indigence, the court deemed the affidavit's allegations true and ordered the district clerk and court reporter to file the records.

CASE DETAILS

COURT	Fourteenth Court of Appeals of Texas
WRITING FOR THE COURT	Chief Justice Hedges; Justice Anderson; Justice Christopher
JURISDICTION	Texas
DECIDED	October 13, 2011
DOCKET	No. 14-11-00445-CV
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from a judgment of the 189th District Court of Harris County. The appellant filed a notice of appeal and an affidavit of indigence, and the Harris County District Clerk contested the affidavit. The appellate court resolved the indigence issue and directed the filing of the clerk's and reporter's records.
PRECEDENTIAL VALUE	Published
PARTIES	Kristofer Thomas Kastner v. The Kroger Co., Ann Potter, Melinda Coombs

TOPICS

appellate procedure

costs

civil procedure

PRACTICE AREAS

Appellate procedure

Civil procedure

QUESTIONS PRESENTED

1. Whether the allegations in the appellant's affidavit of indigence must be deemed true when the trial court fails to timely conduct a hearing or sign an order sustaining the contest.
2. Whether the appellate court should direct the filing of the clerk's and reporter's records after determining that the appellant may proceed without advance payment of costs.

HOLDINGS

1. When the trial court does not sign an order sustaining a contest to an affidavit of indigence within the period established by Texas Rule of Appellate Procedure 20.1(i), the affidavit's allegations are deemed true and the appellant may proceed without advance payment of costs.

KEY QUOTATIONS

“The allegations in appellant’s affidavit of indigence are deemed true and appellant is allowed to proceed without the advance payment of costs.”

FACTUAL BACKGROUND

Kastner sought to appeal without advance payment of costs and filed an affidavit of indigence. The Harris County District Clerk contested the affidavit, but more than four months passed without the trial court conducting the required hearing or signing an order sustaining the contest.

PROCEDURAL HISTORY

The trial court signed a judgment on May 6, 2011, and Kastner filed a notice of appeal on May 18, 2011. The Harris County District Clerk filed a contest to Kastner's affidavit of indigence on May 23, 2011, but the trial court did not conduct the required hearing or sign an order sustaining the contest within the applicable period. With no record filed in the appeal, the Fourteenth Court of Appeals deemed the affidavit's allegations true and ordered the clerk's and reporter's records filed.

DISPOSITION

other

OPINION

PER CURIAM.

Order filed October 13, 2011. In The Fourteenth Court of Appeals _____ NO. 14-11-00445-CV _____ KRISTOFER THOMAS KASTNER, Appellant V. THE KROGER CO., ANN POTTER and MELINDA COOMBS Appellees On Appeal from the 189th District Court Harris County, Texas Trial Court Cause No. 2008-45365 ORDER No record has been filed in this appeal. According to information provided to this court, this is an appeal from a judgment signed May 6, 2011.

Appellant filed his notice of appeal on May 18, 2011. Appellant also filed an affidavit of indigence. On May 23, 2011, the Harris County District Clerk filed a contest to appellant's affidavit of inability to pay costs. Our records do not indicate that the official court reporter, Amanda King, filed a contest. This court has been advised that to date, there has been no order signed on the District Clerk's contest.

Texas Rule of Appellate Procedure 20.1 governs the procedure to be followed when a party seeks to appeal without the advance payment of costs. Rule 20.1(i) provides that the trial court must either conduct a hearing or sign an order extending the time to conduct a hearing within 10 days after the contest was filed. Tex. R. App. P. 20.1(i)(2).

The time for conducted a hearing must not be extended for more than 20 days from the date the order extending the hearing is signed. Tex. R. App. P. 20.1(i)(3). If the trial court has not signed an order sustaining the contest within the period set for the hearing, the affidavit's allegations will be deemed true, and the party will be allowed to proceed without advance payment of costs.

Tex. R. App. P. 20.1(i)(4). In this case, the contest to appellant's affidavit was filed more than four months ago. The time period to conduct a hearing and sign an order sustaining the contest has long passed. Accordingly, we issue the following order: The allegations in appellant's affidavit of indigence are deemed true and appellant is allowed to proceed without the advance payment of costs.

See Tex. R. App. P. 20.1(i)(4). The Harris County District Clerk is ordered to file a clerk=s record in this appeal on or before November 14, 2011. The official court reporter, Amanda King, is ordered to file a reporter=s record in this appeal on or before November 14, 2011. PER CURIAM Panel consists of Chief Justice Hedges and Justices Anderson and Christopher.