

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.

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.