

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

In the Estate of Emily D. Prieto, Deceased

No. 04-22-00038-CV · No. 04-22-00038-CV · Decided January 10, 2023

SUMMARY

The Fourth Court of Appeals in San Antonio orders the Webb County trial court clerk to supplement the appellate record with specified probate documents under Texas Rule of Appellate Procedure 34.5(c). The court also grants an extension of time for appellee to file a responsive brief.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourth District, San Antonio
WRITING FOR THE COURT	Luz Elena D. Chapa, Justice
JURISDICTION	Texas
DECIDED	January 10, 2023
DOCKET	04-22-00038-CV
DISPOSITION	other
PROCEDURAL POSTURE	During a pending appeal, appellee notified the court that portions of the clerk's record were missing and requested supplementation of the record and a brief extension of time.
PRECEDENTIAL VALUE	published

TOPICS

appellate procedure probate procedure probate

PRACTICE AREAS

appellate procedure probate

QUESTIONS PRESENTED

- Whether the appellate court should direct the trial court clerk to supplement the clerk's record with omitted relevant documents under Texas Rule of Appellate Procedure 34.5(c).
- Whether appellee should receive an extension of time to file a responsive brief because of the incomplete clerk's record.

HOLDINGS

1. The appellate court may direct the trial court clerk to prepare, certify, and file a supplemental record containing relevant items omitted from the clerk's record, and the court ordered supplementation of the identified probate documents.
2. Appellee's request for an extension of time to file the responsive brief was granted, with the brief due February 9, 2023.

FACTUAL BACKGROUND

The appellate record was missing complete copies of several probate documents, including the application for probate, the will, the death certificate, the order probating the will, letters testamentary, the complaint, and the inventory. Appellee notified the appellate court of the omissions and requested supplementation of the clerk's record and a short extension of time to file a responsive brief.

PROCEDURAL HISTORY

The matter originated in County Court at Law No. 1 of Webb County, Texas, in probate cause number 2008-PB7-000086L1. While the appeal was pending, appellee asserted that the clerk's record omitted several probate documents. The court ordered the trial court clerk to file a supplemental record and extended appellee's deadline to file a responsive brief.

DISPOSITION

other

REMAND INSTRUCTIONS

The trial court clerk was ordered to prepare, certify, and file complete copies of the specified omitted documents by January 25, 2023. Appellee was ordered to file her brief by February 9, 2023.

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas January 10, 2023 No. 04-22-00038-CV IN THE ESTATE OF EMILY D. PRIETO, Deceased, From the County Court At Law No 1, Webb County, Texas Trial Court No. 2008-PB7-000086L1 Honorable Hugo Martinez, Judge Presiding ORDER Appellee's brief is currently due on January 17, 2023.

On January 3, 2023, appellee filed a "Notice of Incomplete Clerk's Record, Request to Clerk to Supplement Record, and Unopposed Request for Small Extension of Time to File Responsive Brief," maintaining the clerk's record is incomplete and requesting an extension of time to file his brief. Specifically, appellee states the clerk's record is missing complete copies of the following documents: 1.

Application for Probate of Will Produced in Court and For Issuance of Letters Testamentary, including the Will, Death Certificate, and Fiat, filed on September 16, 2008, and 2. Probate a Will, including Proof of Death and Other Facts and Order Probating Will, filed on September 29, 2008. Appellee further maintains the clerk's record is missing the following documents: 1.

Complaint; Letter/Testamentary filed on September 21, 2008 and 2. Inventory filed on May 21, 2009. Under Texas Rule of Appellate Procedure 34.5(c), if a relevant item has been omitted from the clerk's record, the appellate court may direct the trial court clerk to prepare, certify, and file a supplemental record containing the omitted items. See TEX. R. APP.

P. 34.5(c). Accordingly, we order the trial court clerk to file complete copies of the above-listed documents by January 25, 2023. We further grant appellee's request for an extension of time and order appellee to file her brief by February 9, 2023. _____ Luz

Elena D. Chapa, Justice IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 10th day of January, 2023.

_____ MICHAEL A. CRUZ, Clerk of Court