

COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS AT DALLAS

In the Interest of C.J.P., O.R.P., B.H.P., Children

No. 05-22-00233-CV · No. 05-22-00233-CV · Decided May 6, 2022

SUMMARY

The Fifth District Court of Appeals of Texas ordered the trial court to hold a hearing concerning an overdue reporter’s record in an accelerated parental termination appeal. The order required written findings regarding transcription, exhibits, and the necessity or replacement of missing portions of the record, and abated the appeal pending compliance.

CASE DETAILS

COURT	Court of Appeals for the Fifth District of Texas at Dallas
WRITING FOR THE COURT	Robbie Partida-Kipness
JURISDICTION	Texas
DECIDED	May 6, 2022
DOCKET	05-22-00233-CV
DISPOSITION	remanded
PROCEDURAL POSTURE	Accelerated appeal from a parental-termination proceeding in which the reporter's record was overdue. The court abated the appeal and directed the trial court to conduct a hearing and make findings concerning preparation and necessity of the missing record.
PRECEDENTIAL VALUE	Published order according to the supplied metadata; no reporter citation appears in the opinion text.

TOPICS

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

PRACTICE AREAS

- appellate procedure
- family law
- parental rights

QUESTIONS PRESENTED

1. What procedure should be used to obtain and evaluate an overdue reporter's record in an accelerated parental-termination appeal when the original court reporter has retired?

2. Whether the appeal should be abated to permit the trial court to determine whether the designated proceedings and exhibits can be transcribed, whether any missing materials are necessary to resolution of the appeal, and whether they can be replaced by agreement under Texas Rule of Appellate Procedure 34.6(f).

HOLDINGS

1. When an overdue reporter's record cannot be promptly filed because the original court reporter has retired, the appellate court may abate the appeal and direct the trial court to conduct a hearing and make findings concerning transcription, inclusion of exhibits, the reasons for any missing materials, their necessity to the appeal, and possible replacement by agreement.

FACTUAL BACKGROUND

The reporter's record in an accelerated parental-termination appeal was requested on March 18, 2022, and was not filed by its March 28 due date. The court of appeals issued successive orders directing the official court reporter to file the record, but the reporter retired after the appeal was filed and apparently did not receive one of the orders. The court therefore required the trial court to convene a hearing involving the retired reporter, any other reporter who recorded proceedings, and a reporter capable of preparing the record.

PROCEDURAL HISTORY

The appeal was taken from the 305th Judicial District Court of Dallas County, Texas, in trial court cause number JC-19-01286-X. The appellant requested the reporter's record on March 18, 2022, but it was not filed by the initial due date or by later deadlines imposed by the court of appeals. Because the court reporter had retired and the record remained overdue, the court of appeals ordered a trial-court hearing, required written findings and a reporter's record of that hearing, and abated the appeal pending completion of those steps.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The appeal was abated. The 305th Judicial District Court was directed to hold a hearing no later than May 13, 2022, with Pamela Sumler, any other reporter who recorded part of the proceedings, and a reporter designated by the trial court who could prepare and file the record by May 23, 2022. The trial court was required to determine whether the designated proceedings could be transcribed, whether requested exhibits could be included, the reasons for any unavailable materials, whether missing materials were necessary to resolution of the appeal, and whether they could be replaced by agreement under Texas Rule of Appellate Procedure 34.6(f). Written findings and a supplemental clerk's record, together with a reporter's record of the hearing, were ordered by May 16, 2022. The appeal was to be reinstated no later than May 19, 2022.

OPINION

PER CURIAM.

Order entered May 6, 2022 In The Court of Appeals Fifth District of Texas at Dallas No. 05-22-00233-CV IN THE INTEREST OF C.J.P., O.R.P., B.H.P., CHILDREN On Appeal from the 305th Judicial District Court Dallas County, Texas Trial Court Cause No. JC-19-01286-X ORDER The reporter's record in this accelerated parental termination appeal is overdue. It was requested March 18, 2022 and first due March 28, 2022.

When it had not been filed by March 30, we directed Pamela Sumler, at the time the Official Court Reporter for the 305th Judicial District Court, to file the record within ten days. When it had not been filed by April 19, we ordered Ms. Sumler to file the record by April 29. Ms. Sumler retired after this appeal was filed, and it appears she was unaware of our April 19th order as the order was sent to her court address.

Although a copy of the order was also sent to the trial court judge and the trial court coordinator, the Court has received no communication from the trial court concerning the record. Given that Ms. Sumler is now retired and that the reporter's record is more than a month overdue, we determine the best course to ensure the record is filed expeditiously is for the trial court to conduct a hearing at which Ms. Sumler, any other reporter who recorded any portion of the proceedings, and a reporter designated by the trial court and who is able to prepare and file the record no later than May 23, 2022 shall be present.

The trial court shall hold the hearing no later than May 13, 2022 and shall file written findings as to whether the portion of the proceedings designated by appellant in his March 18 request can be transcribed and whether the requested exhibits can be included in the record. If any portion of the proceedings cannot be transcribed and/or any requested exhibit cannot be included, the trial court shall determine the reason for that.

The trial court shall also determine whether the missing portion and/or exhibit are necessary to the resolution of the appeal and can be replaced by agreement. See TEX. R. APP. P. 34.6(f). The trial court shall provide the reporters and parties a minimum forty- eight hours' notice of the hearing.

The trial court's written findings shall be filed in a supplemental clerk's record no later than May 16, 2022. A reporter's record of the hearing shall also be filed no later than May 16, 2022. We DIRECT the Clerk of the Court to send a copy of this order to the Honorable Cheryl Lee Shannon, Presiding Judge of the 305th Judicial District Court; Dallas County District Clerk Felicia Pitre; Tracie Broadnax, Court Coordinator for the 305th Judicial District Court; Ms. Sumler; and, the parties.

We ABATE the appeal to allow the trial court an opportunity to conduct the hearing. The appeal will be reinstated no later than May 19, 2022. /s/ ROBBIE PARTIDA-KIPNESS JUSTICE

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