

## COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

# Kathleen Spangler, Individually and Jeffery Spangler, Individually and as Next Friend of J.S., a Child v. Auto-Chlor Services, LLC and Josue Molina, Individually

No. 05-22-01274-CV (Tex. App.—Dallas May 24, 2023) · No. No. 05-22-01274-CV · Decided May 24, 2023

### SUMMARY

The Fifth District Court of Appeals at Dallas dismissed the appeal for failure to file the clerk’s record or provide proof of payment or arrangements to pay for it. The dismissal was entered under Texas Rules of Appellate Procedure 37.3(b) and 42.3(b), (c), after the appellants failed to comply with the court’s reinstatement order.

### CASE DETAILS

|                       |                                                                                                                                                             |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of Texas, Fifth District at Dallas                                                                                                         |
| WRITING FOR THE COURT | Bonnie Lee Goldstein; Carlyle; Goldstein; Kennedy                                                                                                           |
| JURISDICTION          | Texas                                                                                                                                                       |
| DECIDED               | May 24, 2023                                                                                                                                                |
| DOCKET                | No. 05-22-01274-CV                                                                                                                                          |
| DISPOSITION           | dismissed                                                                                                                                                   |
| PROCEDURAL POSTURE    | Appeal dismissed for want of prosecution after appellants failed to file the clerk's record or proof of payment or arrangements to pay for it as ordered.   |
| PRECEDENTIAL VALUE    | published                                                                                                                                                   |
| PARTIES               | Kathleen Spangler, individually, Jeffery Spangler, individually and as next friend of J.S., a child v. Auto-Chlor Services, LLC, Josue Molina, individually |

### TOPICS

[appellate procedure](#)

[civil procedure](#)

### PRACTICE AREAS

[Appellate procedure](#)

[Civil procedure](#)

## QUESTIONS PRESENTED

1. Whether the appeal should be dismissed when appellants failed to comply with the court's order to file proof of payment or arrangements to pay for the clerk's record.

## HOLDINGS

1. An appeal may be dismissed when appellants fail to comply with an order requiring proof of payment or arrangements to pay for the clerk's record after being warned that noncompliance would result in dismissal.

## KEY QUOTATIONS

*“To date, the clerk’s record has not been filed, appellants have not filed proof of payment or arrangements to pay for the clerk’s record as directed, nor have appellants corresponded with the Court regarding the status of this appeal.”*

## FACTUAL BACKGROUND

The clerk's record had not been filed in the appeal. After reinstatement, appellants failed to file proof that they had paid or arranged to pay for the clerk's record and did not correspond with the appellate court about the appeal's status.

## PROCEDURAL HISTORY

The court initially dismissed the appeal for want of prosecution on February 3, 2023, then reinstated it on March 28, 2023. In the reinstatement order, the court directed appellants to file proof of payment or arrangements to pay for the clerk's record within ten days and warned that noncompliance would result in dismissal. Appellants did not comply or communicate with the court, so the court dismissed the appeal.

## DISPOSITION

dismissed

## OPINION

### PER CURIAM.

Dismiss and Opinion Filed May 24, 2023 In The Court of Appeals Fifth District of Texas at Dallas No. 05-22-01274-CV KATHLEEN SPANGLER, INDIVIDUALLY AND JEFFERY SPANGLER, INDIVIDUALLY AND AS NEXT FRIEND OF J.S., A CHILD, Appellants V. AUTO-CHLOR SERVICES, LLC AND JOSUE MOLINA, INDIVIDUALLY, Appellees On Appeal from the 193rd Judicial District Court Dallas County, Texas Trial Court Cause No. DC-20-02732 MEMORANDUM OPINION Before Justices Carlyle, Goldstein, and Kennedy Opinion by Justice Goldstein By opinion dated February 3, 2023, we dismissed this appeal for want of prosecution.

We reinstated the appeal on March 28, 2023. In the reinstatement order, we ordered appellants to file proof of payment or arrangements to pay for the clerk's record within ten days. We cautioned appellants that failure to do so would result in the dismissal of the appeal without further notice.

To date, the clerk's record has not been filed, appellants have not filed proof of payment or arrangements to pay for the clerk's record as directed, nor have appellants corresponded with the Court regarding the status of this appeal.

Accordingly, we dismiss this appeal. See TEX. R. APP. P. 37.3(b); 42.3(b), (c). /Bonnie Lee Goldstein/ 221274f.p05 BONNIE LEE GOLDSTEIN JUSTICE -2- Court of Appeals Fifth District of Texas at Dallas JUDGMENT KATHLEEN SPANGLER, On Appeal from the 193rd Judicial INDIVIDUALLY AND JEFFERY District Court, Dallas County, Texas SPANGLER, INDIVIDUALLY Trial Court Cause No. DC-20-02732.

AND AS NEXT FRIEND OF J.S., A Opinion delivered by Justice CHILD, Appellants Goldstein. Justices Carlyle and Kennedy participating. No. 05-22-01274-CV V. AUTO-CHLOR SERVICES, LLC AND JOSUE MOLINA, INDIVIDUALLY, Appellees In accordance with this Court's opinion of this date, this appeal is DISMISSED. Judgment entered this 24th day of May, 2023. -3-