

FOURTEENTH COURT OF APPEALS OF TEXAS

Scwyana Smith v. Ankus, L.L.C.

No. 14-21-00468-CV · No. 14-21-00468-CV · Decided September 1, 2022

SUMMARY

The Fourteenth Court of Appeals of Texas ordered the trial court to conduct a hearing under Texas Rule of Civil Procedure 145(i) to determine which portions of the record should be transcribed for an appellant proceeding without payment of costs. The appeal was abated, treated as closed, and removed from the court's active docket pending the trial court's written findings and supplemental records.

CASE DETAILS

COURT	Fourteenth Court of Appeals of Texas
WRITING FOR THE COURT	Per Curiam; Chief Justice Christopher; Justice Wise; Justice Hassan
JURISDICTION	Texas
DECIDED	September 1, 2022
DOCKET	14-21-00468-CV
DISPOSITION	other
PROCEDURAL POSTURE	Interlocutory appellate order abating an appeal because no reporter's record had been filed and directing the trial court to conduct a hearing to designate the portions of the record to be transcribed for an indigent appellant.
PRECEDENTIAL VALUE	Published
PARTIES	Scwyana Smith v. Ankus, L.L.C.

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. What procedure must the trial court follow when an appellant proceeding without payment of costs seeks a reporter's record under Texas Rule of Civil Procedure 145(i)?

2. Whether the appeal should remain on the appellate court's active docket while the trial court determines which portions of the record must be transcribed.

HOLDINGS

1. Under Texas Rule of Civil Procedure 145(i), the trial court must conduct a hearing and designate in writing the portions of the record to be transcribed when a declarant is proceeding without payment of costs.
2. The appeal should be abated, treated as a closed case, and removed from the appellate court's active docket until the trial court's findings and recommendations are filed or the appeal is otherwise reinstated.

KEY QUOTATIONS

“when a declarant is proceeding without payment of costs, “the court must designate the portions to be transcribed.””

FACTUAL BACKGROUND

Smith was proceeding on appeal without payment of costs. No reporter's record had been filed, and the clerk's record did not reflect that Smith had filed a request for a court reporter's record. The court reporter provided the appellate court with an uncertified copy of a document in which Smith requested portions of the record. The trial court had not entered findings concerning the record to be transcribed.

PROCEDURAL HISTORY

Smith appealed from the 113th District Court of Harris County while proceeding without payment of costs. No reporter's record had been filed, and the clerk's record did not show that Smith had properly requested one. After receiving an uncertified copy of a record request, the court of appeals ordered the trial court to conduct a hearing under Texas Rule of Civil Procedure 145(i). The trial court responded that there was no order regarding findings of fact and conclusions of law and no request for findings, so the appellate court issued this order directing a hearing, written findings, and supplemental records.

DISPOSITION

other

REMAND INSTRUCTIONS

The trial court must conduct a hearing with 10 days' notice to the parties and court reporter to determine what portions of the record are to be transcribed; reduce its findings to writing; and cause a supplemental clerk's record containing those findings and a supplemental reporter's record from the hearing to be filed with the court of appeals by October 3, 2022. The appeal is abated, treated as a closed case, and removed from the active docket, subject to reinstatement upon filing of the findings and recommendations or an appropriate motion or the court's own motion.

OPINION

PER CURIAM.

Order filed September 1, 2022 In The Fourteenth Court of Appeals _____ NO. 14-21-00468-CV _____ SCWYANA SMITH, Appellant V. ANKUS, L.L.C., Appellee On Appeal from the 113th District Court Harris County, Texas Trial Court Cause No. 2018-52368 ORDER No reporter's record has been filed in this case. Appellant is proceeding without payment of costs.

See Tex. R. Civ. P. 145. The clerk's record does not reflect that appellant filed a request for a court reporter's record. See Tex. R. App. P. 34.6 (b). On April 14, 2022, the court reporter provided this court with an uncertified copy of a document filed by appellant requesting the portions of the record.

On April 28, 2022, this court ordered the trial court to conduct a hearing pursuant to Texas Rule of Civil Procedure 145(i). See Tex. R. App. P. 145(i). The District Court responded with a letter stating there is "no order signed regarding findings and fact and conclusion of law on this case. And no request for finding of fact." This court orders the trial court to conduct a hearing and provide findings, as explained below.

Pursuant to Texas Rule of Civil Procedure 145(i), when a declarant is proceeding without payment of costs, "the court must designate the portions to be transcribed." Tex. R. Civ. P. 145(i). Accordingly, the trial court is directed to conduct a hearing, with 10 days' notice to the parties and the court reporter, to determine what portions of the record are to be transcribed by the court reporter.

The court is directed to reduce its findings to writing and to have a supplemental clerk's record containing those findings filed with the clerk of this court, together with a supplemental reporter's record from the hearing, by October 3, 2022. See Tex. R. App. P. 34.6(e)(3).

The appeal is abated, treated as a closed case, and removed from this court's active docket. The appeal will be reinstated on this court's active docket when the trial court's findings and recommendations are filed in this court.

The court will also consider an appropriate motion to reinstate the appeal filed by either party, or the court may reinstate the appeal on its own motion. It is the responsibility of any party seeking reinstatement to request a hearing date from the trial court and to schedule a hearing in compliance with this court's order. If the parties do not request a hearing, the court coordinator of the trial court shall set a hearing date and notify the parties of such date.

PER CURIAM Panel Consists of Justices Chief Justice Christopher and Justices Wise and Hassan.