

FOURTEENTH COURT OF APPEALS OF TEXAS

Shelton R. Modelist v. Joseph Dixon and Wanda Dixon, Jointly and Severally and d/b/a Dixon Concrete Contractors

No. 14-11-01036-CV · No. No. 14-11-01036-CV · Decided January 13, 2012

SUMMARY

The Fourteenth Court of Appeals addresses whether a reporter's record is necessary in an appeal from a summary judgment. The court explains that summary judgment proceedings are decided on written materials and orders the appellant's brief to be filed by February 13, 2012.

CASE DETAILS

COURT	Fourteenth Court of Appeals of Texas
JURISDICTION	Texas
DECIDED	January 13, 2012
DOCKET	No. 14-11-01036-CV
DISPOSITION	other
PROCEDURAL POSTURE	Procedural order in an appeal from a summary judgment requiring the appellant to file an appellate brief by February 13, 2012.
PRECEDENTIAL VALUE	published
PARTIES	Shelton R. Modelist v. Joseph Dixon and Wanda Dixon, jointly and severally and d/b/a Dixon Concrete Contractors

TOPICS

[summary judgment](#) [appellate procedure](#) [civil procedure](#)

PRACTICE AREAS

[civil procedure](#) [appellate procedure](#)

QUESTIONS PRESENTED

1. Whether a reporter's record was required in an appeal from a summary judgment proceeding.
2. What deadline should govern appellant's filing of the appellate brief.

HOLDINGS

1. A reporter's record is not required in a summary judgment appeal because summary judgment motions are decided on the written pleadings, affidavits, and discovery on file, unless the appellant establishes that the reporter's record is necessary to the appeal.

KEY QUOTATIONS

“A reporter’s record of the hearing is not necessary in summary judgment proceedings.” (Order)

“Therefore, no reporter’s record is required to be filed in this appeal unless appellant establishes that the record is necessary to his appeal.” (Order)

“Appellant’s brief shall be due on or before February 13, 2012.” (Order)

FACTUAL BACKGROUND

The record reflected that the appeal was from a summary judgment signed on August 30, 2011. The appellate clerk's record was filed on December 19, 2011. The court's order concerned the contents of the appellate record and the deadline for appellant's brief, rather than the underlying merits.

PROCEDURAL HISTORY

The appeal arose from a summary judgment signed by the County Civil Court at Law No. 4 of Harris County on August 30, 2011. The clerk's record was filed in the court of appeals on December 19, 2011. The appellate court issued an order addressing the absence of a reporter's record and setting the deadline for appellant's brief.

DISPOSITION

other

CASES CITED

- McConnell v. Southside I.S.D., 858 S.W.2d 337, 343 n.7 (Tex. 1993)
- Rios v. Northwestern Steel & Wire Co., 974 S.W.2d 932, 936 (Tex. App.—Houston [14th Dist.] 1998, no pet.)

OPINION

PER CURIAM.

Order filed January 13, 2012. In The Fourteenth Court of Appeals _____ NO. 14-11-01036-CV _____ SHELTON R. MODELIST, Appellant V. JOSEPH DIXON and WANDA DIXON, Jointly and Severally and d/b/a DIXON CONCRETE CONTRACTORS, Appellees On Appeal from the County Civil Court at Law No. 4 Harris County, Texas Trial Court Cause No. 984759 ORDER The clerk’s record in this appeal was filed December 19, 2011.

According to the clerk’s record, this is an appeal from a summary judgment signed August 30, 2011. A reporter’s record of the hearing is not necessary in summary judgment proceedings. See

McConnell v. Southside I.S.D., 858 S.W.2d 337, 343, n.7 (Tex. 1993); Rios v. Northwestern Steel & Wire Co., 974 S.W.2d 932, 936 (Tex. App.—Houston [14th Dist.] 1998, no pet.).

Motions for summary judgment are decided solely on the written pleadings, affidavits and discovery on file with the trial court. See Tex. R. Civ. P. 166a(b). Therefore, no reporter's record is required to be filed in this appeal unless appellant establishes that the record is necessary to his appeal.

Accordingly, we issue the following order: Appellant's brief shall be due on or before February 13, 2012. PER CURIAM 2