

COURT OF APPEALS OF TEXAS, EIGHTH DISTRICT, EL PASO

Ruben Montelongo v. George Cisneros

Montelongo · No. 08-08-00324-CV · Decided September 22, 2010

SUMMARY

The Eighth District Court of Appeals of Texas granted the parties' joint motion to dismiss an appeal after they reported settling the underlying claims with Bankruptcy Court approval. Because the motion did not establish an agreement regarding costs, the court assessed appellate costs against the appellant.

CASE DETAILS

COURT	Court of Appeals of Texas, Eighth District, El Paso
WRITING FOR THE COURT	Guadalupe Rivera; Chew, Chief Justice; McClure, Justice; Guadalupe Rivera, Justice
JURISDICTION	Texas
DECIDED	September 22, 2010
DOCKET	08-08-00324-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellant appealed from the County Court at Law No. 6 of El Paso County and then jointly moved with appellee to dismiss the appeal pursuant to a settlement agreement.
PRECEDENTIAL VALUE	published
PARTIES	Ruben Montelongo v. George Cisneros

TOPICS

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

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the parties' joint motion to dismiss the appeal should be granted after they reached a settlement approved by the Bankruptcy Court.

2. Which party should bear the costs of the appeal when the joint motion does not demonstrate an agreement regarding costs.

HOLDINGS

1. The court granted the parties' joint motion and dismissed the appeal under Texas Rule of Appellate Procedure 42.1(a)(2).
2. Because the joint motion did not show an agreement concerning costs, the court assessed the costs of the appeal against appellant.

FACTUAL BACKGROUND

The appeal involved claims that the parties later settled. During the appeal, Ruben Montelongo filed for bankruptcy, and the appellate proceedings were stayed. The Bankruptcy Court approved lifting the stay so the appeal could continue and later approved the parties' settlement.

PROCEDURAL HISTORY

After the appeal was filed, appellant filed for bankruptcy, and the Court of Appeals stayed the proceedings under Texas Rule of Appellate Procedure 8.2. The stay was later lifted with the Bankruptcy Court's approval. The parties represented that they had settled the claims underlying the appeal and that the settlement had been approved by the Bankruptcy Court. The appellate court granted the joint motion to dismiss and assessed appellate costs against appellant.

DISPOSITION

dismissed

OPINION

PER CURIAM.

COURT OF APPEALS EIGHTH DISTRICT OF TEXAS EL PASO, TEXAS RUBEN MONTELONGO, § No. 08-08-00324-CV Appellant, § Appeal from the v. § County Court at Law No. 6 GEORGE CISNEROS, § of El Paso County, Texas Appellee. § (TC# 2006-3279) § MEMORANDUM OPINION Pending before the Court is a joint motion to dismiss the appeal pursuant to the parties' agreement. See TEX. R. APP.

P. 42.1(a)(2). Originally, this Court stayed the proceedings after Appellant, Ruben Montelongo, filed for bankruptcy in the United States Bankruptcy Court. See TEX. R. APP. P. 8.2. However, that stay was later lifted, with the Bankruptcy Court's approval, to allow the appeal to continue.

The parties now assert, in their joint motion, that they have settled the claims that formed the basis of the appeal and that their settlement has been approved by the Bankruptcy Court. We therefore grant the motion and dismiss the appeal.

Because the motion does not show an agreement as to costs, we assess costs of this appeal against Appellant. See TEX. R. APP. P. 42.1(d). September 22, 2010 GUADALUPE RIVERA, Justice Before Chew, C.J., McClure, and Rivera, JJ.

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