

COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS AT DALLAS

Brigetta D'Olivio v. Greg Fox and Laura Fox

No. 05-18-00868-CV · No. No. 05-18-00868-CV · Decided March 11, 2019

OPINION

PER CURIAM.

Order entered March 11, 2019 In The Court of Appeals Fifth District of Texas at Dallas No. 05-18-00868-CV BRIGETTA D'OLIVIO, Appellant V. GREG FOX AND LAURA FOX, Appellees On Appeal from the 191st Judicial District Court Dallas County, Texas Trial Court Cause No. DC-16-05606 ORDER Before the Court are appellant's March 7, 2019 emergency motion to extend time to file an amended brief and March 4, 2019 third amended motion for an extension of time to file an amended brief and appellees' objection to that motion.

In the motions, appellant complains that (1) the clerk's record is incomplete, (2) certain documents are missing from the "Court Portal", (3) the reporter's record contains inaccuracies, and (4) certain exhibits are missing from the reporter's record. A copy of appellant's motion is attached.

We GRANT the motions as follows. We ORDER the trial court to conduct a hearing, within thirty days of the date of this order and make the following written findings: 1 As to the clerk's record, the trial court shall make written findings regarding: (1) why a supplemental clerk's record containing the thirty-nine documents listed in the attached motion has not been filed and (2) whether the six documents listed in the attached motion and requested for inclusion in a supplemental clerk's record are now missing.

If the trial court finds any document designated for inclusion in the clerk's record has been lost or destroyed, the trial court must determine what constitutes an accurate copy of the missing document and order it to be included in a supplemental clerk's record. See TEX. R. APP. P. 34.5(e).

The trial court shall order a supplemental clerk's record containing all the available requested documents be filed. As to the reporter's record, the trial court shall make written findings regarding: (1) whether the Master Index to the reporter's record contains the errors alleged in the attached motion; (2) whether volumes three and five of the reporter's record contain the errors alleged in the attached motion; and (3) whether volume ten is missing any exhibits and contains exhibits that have been fabricated since trial as alleged in the attached motion.

See id. 34.6(e). If the trial court finds any inaccuracies in the reporter's record, it must order the court reporter to conform the reporter's record to what occurred in the trial court and to file certified corrections in this Court. See id. 34.6(e)(3). If the trial court finds that any exhibit is

missing from the reporter's record and the parties cannot agree to replace the missing exhibit, the trial court shall determine if (1) the missing exhibit was lost without appellant's fault, (2) the missing exhibit is necessary to the appeal's resolution, and (3) the exhibit can be replaced with a copy determined by the trial court to accurately duplicate with reasonable certainty the original exhibit.

See id. 34.6(f)(2)-(4). We ORDER Felicia Pitre, Dallas County District Clerk, to file, within forty days of the date of this order, a supplemental clerk's record containing the trial court's written findings and all the documents requested by appellant the trial court found available. 2 We ORDER Melba Wright, Official Court Reporter for the 191st Judicial District Court to file, within forty days of the date of this order, a reporter's record from the hearing and any corrected reporter's record as ordered by the trial court.

We DIRECT the Clerk of this Court to send a copy of this order to the Honorable Gena Slaughter, Presiding Judge of the 191st Judicial District Court; Ms. Pitre; Ms. Wright; and all parties. We ABATE this appeal to allow the trial court to comply with this order.

The appeal will be reinstated in forty-five days. /s/ BILL WHITEHILL JUSTICE 3