

TENTH COURT OF APPEALS OF TEXAS

Fort Worth & Western Railroad Company v. Nathan D. Albert and Chisholm Trail Redi-Mix, LLC

Nos. 10-19-00084-CV and 10-18-00219-CV · No. Nos. 10-19-00084-CV and 10-18-00219-CV · Decided May 15, 2019

SUMMARY

The Tenth Court of Appeals of Texas referred consolidated appeals involving Fort Worth & Western Railroad Company, Nathan D. Albert, and Chisholm Trail Redi-Mix, LLC to mediation. The order appointed Deborah G. Hankinson as mediator, established mediation and reporting requirements, suspended appellate deadlines, and stated that objections had to be filed within ten days.

CASE DETAILS

COURT	Tenth Court of Appeals of Texas
WRITING FOR THE COURT	Chief Justice Gray; Justice Davis; Senior Justice Al Scoggins, sitting by assignment
JURISDICTION	Texas
DECIDED	May 15, 2019
DOCKET	Nos. 10-19-00084-CV and 10-18-00219-CV
DISPOSITION	other
PROCEDURAL POSTURE	The court issued an order referring two related appeals from the 18th District Court of Johnson County to mediation.
PRECEDENTIAL VALUE	Published procedural order; no substantive merits holding.
PARTIES	Nathan D. Albert, Chisholm Trail Redi-Mix, LLC, Fort Worth & Western Railroad Company v. Fort Worth & Western Railroad Company, Davoil, Inc., William S. Davis, Nathan D. Albert, Chisholm Trail Redi-Mix, LLC

TOPICS

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

PRACTICE AREAS

[civil procedure](#) [alternative dispute resolution](#)

QUESTIONS PRESENTED

1. Whether the related appeals should be referred to mediation.
2. What procedural requirements and effect should govern the mediation referral.

HOLDINGS

1. The court determined that the appeals were appropriate for mediation and referred them to mediation under applicable Texas alternative-dispute-resolution law and the court's local rule.
2. The appeals and all appellate deadlines were suspended as of the order date; the suspension would lift upon receipt of the mediator's report, and unexpired deadlines would begin anew if mediation did not resolve the matter.

KEY QUOTATIONS

“Mediation is a mandatory but non-binding settlement conference, conducted with the assistance of a mediator. Mediation is private, confidential, and privileged.” (at 1)

“The appeal and all appellate deadlines are suspended as of the date of this Order.” (at 3)

FACTUAL BACKGROUND

The opinion contains no substantive factual discussion of the underlying disputes. It concerns two related appeals involving Fort Worth & Western Railroad Company, Nathan D. Albert, Chisholm Trail Redi-Mix, LLC, Davoil, Inc., and William S. Davis.

PROCEDURAL HISTORY

Two related appeals were pending before the Tenth Court of Appeals of Texas. The court determined that the appeals were appropriate for mediation, appointed Deborah G. Hankinson as mediator, and suspended the appeals and appellate deadlines pending the mediator's report.

DISPOSITION

other

OPINION

Fort Worth & Western Railroad Company v. Nathan D. Albert and Chisholm Trail Redi-Mix, LLC
PER CURIAM.

IN THE

TENTH COURT OF APPEALS

No. 10-19-00084-CV

NATHAN D. ALBERT AND CHISHOLM TRAIL REDI-MIX, LLC,

Appellants v.

FORT WORTH & WESTERN RAILROAD COMPANY, DAVOIL, INC.,

AND WILLIAM S. DAVIS,

Appellees From the 18th District Court Johnson County, Texas Trial Court No. Dc-C201700680
No. 10-18-00219-CV

FORT WORTH & WESTERN RAILROAD COMPANY,

Appellant v.

NATHAN D. ALBERT AND CHISHOLM TRAIL REDI-MIX, LLC,

Appellees From the 18th District Court Johnson County, Texas Trial Court No. DC-C201600307

ORDER OF REFERRAL TO MEDIATION

The Legislature has provided for the resolution of disputes through alternative dispute resolution (ADR) procedures. See TEX. CIV. PRAC. & REM. CODE ANN. §§ 154.001- 154.073. The policy behind ADR is stated in the statute: “It is the policy of this state to encourage the peaceable resolution of disputes . . . and the early settlement of pending litigation through voluntary settlement procedures.” Id. § 154.002. Mediation is a form of ADR. Mediation is a mandatory but non-binding settlement conference, conducted with the assistance of a mediator. Mediation is private, confidential, and privileged. We find that these appeals are appropriate for mediation. See id. § 154.021(a); 10TH TEX. APP. (WACO) LOC. R. 9. The Court assigns Deborah G. Hankinson as the mediator. She can be contacted at the following address, telephone phone number, or email: Hankinson PLLC 750 N Saint Paul St., Ste 1800 Dallas, TX 75201

(214) 754-9185

deborah@dhankinson.com Mediation must occur within sixty days after the date of this order. No less than seven calendar days before the first scheduled mediation session, each party must provide the mediator and all other parties with an information sheet setting forth the party’s positions about the issues that need to be resolved. At or before Albert v. Fort Worth & Western R.R. Co. Page 2 Fort Worth & Western R.R. Co. v. Albert the first session, all parties must produce all information necessary for the mediator to understand the issues presented. The mediator may require any party to supplement the information required by this Order. Named parties must be present during the entire mediation process, and each party that is not a natural person must be represented by an employee, officer, agent, or representative with authority to bind the party to settlement. Immediately after mediation, the mediator must advise this Court, in writing, only that the case did or did not settle and the amount of the mediator’s fee paid by each party. The mediator’s fees will be taxed as costs. Unless the mediator agrees to mediate without fee, the mediator must negotiate a reasonable fee with the parties, and the parties must each pay one-half of the agreed-upon fee directly to the mediator. Failure or refusal to attend the entire mediation as scheduled may result in the imposition of sanctions, as permitted by law. Any objection to this Order must be filed with this Court and served upon all parties within ten days after the date of this Order, or it is waived. We refer this appeal to mediation. The appeal and all appellate deadlines are suspended as of the date of this Order. The suspension of the appeal is automatically lifted when the mediator’s report to the Court is received. If the matter is not resolved at

mediation, any deadline that began to run and had not expired by the date of this Order will begin anew as of the date the Albert v. Fort Worth & Western R.R. Co. Page 3 Fort Worth & Western R.R. Co. v. Albert mediator's report to the Court is received. Any document filed by a party after the date of this Order and prior to the filing of the mediator's report will be deemed filed on the same day, but after, the mediator's report is received.

PER CURIAM

Before Chief Justice Gray, Justice Davis, and Justice Scoggins¹ Referral to Mediation Order issued and filed May 15, 2019 ¹ The Honorable Al Scoggins, Senior Justice of the Tenth Court of Appeals, sitting by assignment of the Chief Justice of the Texas Supreme Court. See TEX. GOV'T CODE ANN. §§ 74.003, 75.002, 75.003. Albert v. Fort Worth & Western R.R. Co. Page 4 Fort Worth & Western R.R. Co. v. Albert