

COURT OF APPEALS OF TEXAS, TENTH DISTRICT

In the Matter of the Marriage of Douglas Capener and Kristen Yarbrough aka Kristen Capener and in the Interest of B.C. and K.C., Children

In re Marriage of Capener · No. 10-22-00157-CV · Decided June 8, 2022

SUMMARY

The Tenth Court of Appeals of Texas dismissed Douglas Capener’s appeal from an order granting de novo relief in a family-law matter. The dismissal followed the trial court’s entry of an agreed order granting a new trial and vacating the challenged order; costs were taxed against Capener, and unpaid filing fees were written off by the court without eliminating Capener’s underlying obligation.

CASE DETAILS

COURT	Court of Appeals of Texas, Tenth District
WRITING FOR THE COURT	Tom Gray, Chief Justice; Justice Johnson; Rex Davis, Senior Justice (Retired), sitting by assignment
JURISDICTION	Texas
DECIDED	June 8, 2022
DOCKET	10-22-00157-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Douglas Capener appealed an order granting de novo relief and moved to dismiss the appeal after the trial court vacated that order through an agreed order granting a new trial.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential status is not otherwise specified in the opinion text.
PARTIES	Douglas Capener

TOPICS

- family law procedure
- appellate procedure
- motion for new trial
- mootness
- costs

PRACTICE AREAS

- Family law
- Appellate procedure

QUESTIONS PRESENTED

1. Whether the appeal should be dismissed after the trial court vacated the order being appealed through an agreed order granting a new trial.
2. Whether unpaid appellate filing fees should be written off under the circumstances presented.

HOLDINGS

1. The appeal was dismissed because the trial court had vacated the Order on Petitioner's Request for De Novo Relief, and dismissal would not prevent any party from seeking appropriate relief.
2. Because there was no agreement otherwise, costs were taxed against Capener, and the court suspended the applicable filing-fee rule and ordered the Clerk to write off the unpaid filing fees from the court's accounts receivable without eliminating or reducing Capener's underlying obligation.

KEY QUOTATIONS

“No party will be prevented from seeking relief to which they are entitled if the motion is granted.”

“The write-off of the fees from the accounts receivable of the Court in no way eliminates or reduces the fees owed by Capener.”

FACTUAL BACKGROUND

The trial court entered an Order on Petitioner's Request for De Novo Relief in a family-law proceeding involving the marriage of Douglas Capener and Kristen Yarbrough and their children. While Capener's appeal was pending, the trial court signed an agreed order granting a new trial and vacating the challenged order. The appellate court concluded that dismissal would not prevent any party from seeking relief to which the party was entitled.

PROCEDURAL HISTORY

The 361st District Court of Brazos County entered an Order on Petitioner's Request for De Novo Relief. Capener appealed. While the appeal was pending, the trial court signed an Agreed Order Granting Motion for New Trial that vacated the challenged order. Capener then moved to dismiss, and the Court of Appeals granted the motion.

DISPOSITION

dismissed

OPINION

PER CURIAM.

IN THE TENTH COURT OF APPEALS No. 10-22-00157-CV IN THE MATTER OF THE MARRIAGE OF DOUGLAS CAPENER AND KRISTEN YARBROUGH AKA KRISTEN CAPENER AND IN THE INTEREST OF B.C. AND K.C., CHILDREN From the 361st District

Court Brazos County, Texas Trial Court No. 16-001458-CVD-361 MEMORANDUM OPINION
Douglas Capener appealed the trial court's Order on Petitioner's Request for De Novo Relief.

Capener now moves to dismiss his appeal because the trial court has signed an Agreed Order Granting Motion for New Trial vacating the Order on Petitioner's Request for De Novo Relief. No party will be prevented from seeking relief to which they are entitled if the motion is granted.

Accordingly, Capener's motion to dismiss is granted, and this appeal is dismissed. See TEX. R. APP. P. 42.1(a)(1). There being no agreement otherwise, costs are taxed against Capener. See *id.* (d). Capener's filing fee has not been paid. Absent a specific exemption, the Clerk of the Court must collect filing fees at the time a document is presented for filing.

TEX. R. APP. P. 12.1(b); Appendix to TEX. R. APP. P., Order Regarding Fees (Amended Aug. 28, 2007, eff. Sept. 1, 2007). See also TEX. R. APP. P. 5; TEX. GOV'T CODE §§ 51.207(b); 51.208; § 51.941(a). Under these circumstances, we suspend the rule and order the Clerk to write off all unpaid filing fees in this case. TEX. R. APP. P. 2.

The write-off of the fees from the accounts receivable of the Court in no way eliminates or reduces the fees owed by Capener. TOM GRAY Chief Justice Before Chief Justice Gray, Justice Johnson, and Justice Davis 1 Appeal dismissed Opinion delivered and filed June 8, 2022 [CV06] 1 The Honorable Rex Davis, Senior Justice (Retired) of the Tenth Court of Appeals, sitting by assignment of the Chief Justice of the Texas Supreme Court.

See TEX. GOV'T CODE §§ 74.003, 75.002, 75.003. In the Matter of the Marriage of Capener
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