

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT

Adam E. Salazar v. Pauline Dickey, Frank E. Dickey, Elizabeth Coronado, Robert Ross, M.D., SCI Texas Funeral Services, Inc. d/b/a Roy Akers Zizik Kearns Funeral Chapels and d/b/a Sunset Northwest Chapel

Salazar v. Dickey · No. 04-08-00022-CV · Decided July 16, 2008

SUMMARY

The Fourth Court of Appeals of Texas held that the trial court failed to comply with Texas Rule of Appellate Procedure 20.1 after the appellate court referred a contest to an affidavit of indigence. Because the trial court did not conduct a new hearing within ten days of the referral, the court reversed the order sustaining the contest and rendered judgment allowing Salazar to proceed without advance payment of costs.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of Texas, Fourth District                                                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Per Curiam; Karen Angelini, Justice; Sandee Bryan Marion, Justice; Phylis J. Speedlin, Justice                                                                                                                                                                                                                                                                                    |
| JURISDICTION          | Texas                                                                                                                                                                                                                                                                                                                                                                             |
| DECIDED               | July 16, 2008                                                                                                                                                                                                                                                                                                                                                                     |
| DOCKET                | 04-08-00022-CV                                                                                                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | reversed                                                                                                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Salazar appealed the trial court's order sustaining contests to his affidavit of indigence. The court of appeals withdrew its prior affirming opinion, considered whether the trial court complied with Texas Rule of Appellate Procedure 20.1(i) after referral of the contest, and reversed and rendered judgment allowing Salazar to proceed without advance payment of costs. |
| PRECEDENTIAL VALUE    | Unpublished memorandum opinion                                                                                                                                                                                                                                                                                                                                                    |
| PARTIES               | Adam E. Salazar v. Pauline Dickey, Frank E. Dickey, Elizabeth Coronado, Robert Ross, M.D., SCI Texas Funeral Services, Inc. d/b/a Roy Akers Zizik Kearns Funeral Chapels and d/b/a Sunset Northwest Chapel                                                                                                                                                                        |

## TOPICS

appellate procedure

civil procedure

appellate jurisdiction

standard of review

## PRACTICE AREAS

civil procedure

appellate procedure

## QUESTIONS PRESENTED

1. Whether the trial court was required to conduct a hearing or sign an order extending the hearing period within ten days after the court of appeals referred the contest to it under Texas Rule of Appellate Procedure 20.1(i).
2. Whether a trial court lacking plenary power may conduct a hearing on a contest to an affidavit of indigence or rely on evidence presented at such a hearing.
3. Whether failure to conduct the required hearing within ten days required that Salazar be deemed indigent and allowed to proceed without advance payment of costs.
4. Whether the court of appeals' February 26, 2008 order sufficiently referred the contest to the trial court to trigger Rule 20.1(i)'s requirements.

## HOLDINGS

1. A trial court that lacks plenary power has no authority to conduct a hearing on a contest to an affidavit of indigence.
2. An appellate order directing the trial court to determine the merits of an indigence contest and citing Rule 20.1(i) sufficiently refers the contest and triggers the rule's ten-day requirements.
3. When an appellate court refers an indigence contest, the trial court must conduct a hearing or sign an order extending the time within ten days; if it does neither, the affidavit's allegations are deemed true and the party must be allowed to proceed without advance payment of costs.

## KEY QUOTATIONS

*"If a trial court does not have plenary power, it has no authority to conduct a hearing on a contest."* (-4-)

*"And, because the trial court did not conduct a hearing within ten days of receiving our referral, Salazar is now deemed indigent."* (-4-)

*"Because the trial court did not conduct a hearing pursuant to Rule 20.1(i) within ten days of receiving our referral, we reverse the trial court's order sustaining the contest to appellant's claim of indigence and render judgment that Salazar be allowed to proceed without advance payment of costs."* (-5-)

## FACTUAL BACKGROUND

Salazar filed a timely notice of appeal and later filed an affidavit of indigence, but did not serve the affidavit on all parties. The court reporter and SCI Texas Funeral Services contested the affidavit. The trial court conducted

an initial contest hearing while it lacked plenary power, and after the court of appeals referred the contest, it signed an order relying on evidence from that earlier hearing rather than conducting a new hearing.

## PROCEDURAL HISTORY

Salazar timely filed a notice of appeal but initially did not file or properly serve an affidavit of indigence. The court reporter and SCI Texas Funeral Services filed contests. The trial court held a hearing while it lacked plenary power and later signed an order sustaining the contests based on evidence from that hearing. After the court of appeals referred the contest to the trial court, the trial court did not hold a new hearing within ten days. The court withdrew its earlier opinion affirming the order and substituted this opinion reversing the order and rendering judgment that Salazar could proceed as indigent.

## DISPOSITION

reversed

## REMAND INSTRUCTIONS

No remand was ordered. The court reversed the trial court's order sustaining the contest and rendered judgment that Salazar be allowed to proceed without advance payment of costs.

## CASES CITED

- Higgins v. Randall County Sheriff's Office, 193 S.W.3d 898 (Tex. 2006)
- In re J.B., No. 12-03-00033-CV, 2003 WL 1922835, at \*2 (Tex. App.—Tyler 2003, no pet.)
- Higgins v. Randall County Sheriff's Office, No. 06-0917, 2008 WL 2069834, at \*4 (Tex. May 16, 2008)

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