

Dismissed and Opinion filed May 18, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-00439-CV

NATHAN McDADE, Appellant

V.

JAMES C. JACKSON, Appellee

**On Appeal from the 333rd District Court
Harris County, Texas
Trial Court Cause No. 97-62006**

O P I N I O N

This is an appeal from a summary judgment signed April 13, 1999. Appellant filed his notice of appeal on April 27, 1999. Appellant also filed a pro se application to proceed in forma pauperis on April 27, 1999. On May 3, 1999, the Harris County District Clerk filed a contest to appellant's affidavit of inability to pay costs. The contest was set for submission before the trial court on May 7, 1999. On May 12, 1999, the trial court signed an order sustaining the district clerk's contest.

On May 26, 1999, appellant filed a motion with this court requesting that we review the trial court's order sustaining the contest to his affidavit of indigence. After review, this Court failed to find that the trial

court abused its discretion. Accordingly, we did not disturb the trial court's order sustaining the district clerk's contest to appellant's request to proceed in forma pauperis.

On October 28, 1999, this Court ordered appellant to pay or make arrangements to pay for the record in this appeal. *See* TEX. R. APP. P. 35.3(a)(2). The order stated that unless appellant provides this court with proof of payment for the record within fifteen days of the date of this order, we would dismiss the appeal for want of prosecution. *See* TEX. R. APP. P. 37.3(b). On November 4, 1999, appellant filed an objection to the Court's order, but the Court declined to reconsider its order of October 28, 1999.

On January 24, 2000, the Court notified appellant of its intent to dismiss his appeal for want of prosecution. On February 3, 2000, appellant filed a response in which he asserted he would arrange to pay for the record on appeal. Accordingly, the Court ordered that unless appellant made arrangements to pay the Harris County District Clerk its fee for preparation of the record and the record was filed with this Court by March 31, 2000, the appeal would be dismissed. *See* TEX. R. APP. P. 37.3(b).

On February 28, 2000, appellant filed a copy of his request to the Harris County District Clerk to forward the record to this Court, and he stated that payment would be made from the TDCJ-ID's Inmates Trust Fund. The District Clerk refused to forward the record until payment was received.

On April 25, 2000, notification was again transmitted to all parties of the Court's intent to dismiss the appeal for want of prosecution unless the clerk's record was filed with this Court by May 11, 2000. *See* TEX. R. APP. P. 37.3(b). To date, the record has not been filed with this Court. On May 1, 2000, appellant responded to the Court's notice of intent to dismiss. In his response, appellant reargued his indigent status. This Court has previously reviewed, and previously refused to reconsider, the trial court's order sustaining the contest to appellant's claim of indigency.

Accordingly, the appeal is ordered dismissed.

PER CURIAM

Judgment rendered and Opinion filed May 18, 2000.

Panel consists of Chief Justice Murphy, Justices Hudson and Wittig.

Do Not Publish — TEX. R. APP. P. 47.3(b).