

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

LUIS FRANCISCO

ELSA FRANCISCO-SOTO
Petitioner

v.

THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
Respondent

APPENDIX

PARCHMAN LAW GROUP PLLC

Jon Parchman,
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The Woodlands, Texas 77380
Telephone: (713) 518-1902
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Counsel for Petitioners

APPENDIX A

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-18-00156-CV

IN THE INTEREST OF M.F.S., M.F.S. AND A.F.S.

**On Appeal from the 418th District Court
Montgomery County, Texas
Trial Cause No. 17-03-03917-CV**

ORDER

Appellants challenge the trial court's order granting the court reporter's contest to appellants' statements of inability to afford payment of costs. *See Tex. R. Civ. P. 145(g)*. The declarations that were admitted into evidence at the hearing reveal no non-exempt assets. Appellants' combined income is \$1,400 per month and their combined expenses are \$1,250 per month. They receive no need-based public benefits. They owe \$50,000 in attorney's fees and appellate counsel is representing appellants *pro bono*. The trial court found that appellants failed to meet their burden to prove their inability to pay costs. *See Tex. R. Civ. P. 145(f)(5)*.

We review the trial court's order for abuse of discretion and will affirm the order unless the record reflects that the trial court acted in an arbitrary and unreasonable manner or without reference to any guiding rules or principles. *See In re A.L.V.Z.*, 352 S.W.3d 568, 570 (Tex. App.—Dallas 2011, no pet.); *White v. Bayless*, 40 S.W.3d 574, 576 (Tex. App.—San Antonio 2001, pet. denied). The central inquiry under rule 145 “is not merely whether a person can pay costs, but whether the person can afford to pay costs” and still pay for “basic essentials, like housing or food.” *See Tex. R. Civ. P.* 145, cmt.

The record shows appellants’ monthly income exceeds their living expenses and there is no evidence in the record regarding the estimated cost for the reporter’s record. Without knowing the reporter’s fee, we are unable to determine what effect payment of that fee would have on appellants’ ability to meet their basic needs considering the \$150 they have left each month after paying their living expenses. *See In re J.S.*, No. 05-17-00341-CV, 2017 WL 455406, at *2 (Tex. App.—Dallas Apr. 29, 2017, no pet.) (mem. op.). Based on the record before us, we hold that the trial court did not abuse its discretion by sustaining the court reporter’s challenge to the appellants’ statements of inability to pay costs. We affirm the trial court’s order.

ORDER ENTERED July 25, 2018.

PER CURIAM

Before McKeithen, C.J., Kreger and Horton, JJ.

APPENDIX B

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-18-00156-CV

IN THE INTEREST OF M.F.S., M.F.S., AND A.F.S.

**On Appeal from the 418th District Court
Montgomery County, Texas
Trial Cause No. 17-03-03917-CV**

MEMORANDUM OPINION

The trial court clerk informed the Court that no arrangements have been made to pay for the District Clerk to prepare the clerk's record. On July 16, 2018, we warned the appellants that their appeal could be dismissed unless they established that they had arranged to pay the fee required to obtain the record with the clerk, or they filed a motion explaining why they needed additional time. On July 25, 2018, we affirmed the trial court's order granting the court reporter's contest to the appellants' statements claiming they were unable to afford to pay costs. *See Tex. R. Civ. P. 145(g).*

There being no satisfactory explanation for the appellants' failure to pay the filing fee for the appeal and failure to file the clerk's record that is relevant to their appeal, we dismiss the appeal for want of prosecution. *See Tex. R. App. P. 37.3(b), 42.3.*

APPEAL DISMISSED.

HOLLIS HORTON
Justice

Submitted on August 29, 2018
Opinion Delivered August 30, 2018

Before McKeithen, C.J., Kreger and Horton, JJ.

APPENDIX C



CHIEF JUSTICE
STEVE MCKEITHEN

JUSTICES
CHARLES KREGER
HOLLIS HORTON
LEANNE JOHNSON

Court of Appeals
State of Texas
Ninth District

CLERK
CAROL ANNE HARLEY

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Wednesday, September 19, 2018

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Mark Thomas Zuniga
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RE: Case Number: 09-18-00156-CV
Trial Court Case 17-03-03917-CV
Number:

Style: In the Interest of M.F.S., M.F.S. and A.F.S.

The Appellant's motion for rehearing and en banc reconsideration and supplement to motion for rehearing and en banc reconsideration in the above styled and numbered cause were denied this date.

Sincerely,

CAROL ANNE HARLEY
CLERK OF THE COURT

cc: Judge Tracy A. Gilbert (DELIVERED VIA E-MAIL)
Pamela May (DELIVERED VIA E-MAIL)
Koroush C. Ghanean (DELIVERED VIA E-MAIL)
Jill Driscoll (DELIVERED VIA E-MAIL)
Kathryn Aaron (DELIVERED VIA E-MAIL)

Jennifer Jordan (DELIVERED VIA E-MAIL)
Barbara Adamick (DELIVERED VIA E-MAIL)
Juliette Marie Rinker (DELIVERED VIA E-MAIL)
Christa Townes (DELIVERED VIA E-MAIL)

APPENDIX D

FILE COPY

RE: Case No. 18-0733
COA #: 09-18-00156-CV
STYLE: PT CASE: FRANCISCO v. TDFPS

DATE: 12/14/2018
TC#: 17-03-03917-CV

Today the Supreme Court of Texas denied the petition for review in the above-referenced case. Both Emergency Motions for Stay are dismissed as moot.

MR. MARK T. ZUNIGA
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MR. J. D. LAMBRIGHT
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DISTRICT CLERK MONTGOMERY COUNTY
MONTGOMERY COUNTY COURT
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CONROE, TX 77305-2985
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MS. SUSAN MARIE FISHER
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MS. CAROL ANNE HARLEY
CLERK, NINTH COURT OF APPEALS
1001 PEARL STREET, SUITE 330
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APPENDIX E

FILE COPY

RE: Case No. 18-0733
COA #: 09-18-00156-CV
STYLE: PT CASE: FRANCISCO v. TDFPS

DATE: 2/1/2019
TC#: 17-03-03917-CV

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

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RE: Case No. 18-0733
COA #: 09-18-00156-CV
STYLE: PT CASE: FRANCISCO v. TDFPS

DATE: 2/1/2019
TC#: 17-03-03917-CV

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

MR. J. D. LAMBRIGHT
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RE: Case No. 18-0733
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STYLE: PT CASE: FRANCISCO v. TDFPS

DATE: 2/1/2019
TC#: 17-03-03917-CV

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DISTRICT CLERK MONTGOMERY COUNTY
MONTGOMERY COUNTY COURT
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