

No. 14-14-00666-CV

IN THE COURT OF APPEALS
FOURTEENTH JUDICIAL DISTRICT
HOUSTON, TEXAS

MARK THUESEN,

Appellant

FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS

V.

9/8/2014 9:24:00 AM

CHRISTOPHER A. PRINE

AMERISURE INSURANCE COMPANY, SWAMPLOT INDUSTRIES LLC,
LAURENCE DAVID ALBERT AND BETH ANNE BRINDSON,

Appellees,

On Appeal from the 151st Judicial District Court, Harris County, Texas
Trial Court Cause Number 2012-49262

APPELLANT'S MOTION TO COMPEL CLERK'S RECORD

TO THE HONORABLE FOURTEENTH COURT OF APPEALS:

1. On August 13, 2014, Appellant filed his Notice of Appeal in the trial court and pursuant to TRAP 34.5, Appellant requested the clerk's record in his Notice of Appeal. In addition, pursuant to *TRAP 20.1(c)(1)*, Appellant filed his affidavit of indigence in the trial court with the notice of appeal. The Fourteenth Court of Appeals set August 25, 2014 as the due date for the clerk's record.

2. Pursuant to *TRAP 20.1(e)(1)*, the clerk, or any party, may challenge an affidavit by filing a contest to the affidavit. The contest must be filed within 10 days after the date when the affidavit was filed if the affidavit was filed in the trial court. The deadline to file a contest would have been August 23, 2014. Pursuant to *TRAP 20.1(f)*, “Unless a contest is timely filed, no hearing will be conducted, the affidavit’s allegations will be deemed true, and the party will be allowed to proceed without advance payment of costs.”
3. On August 27, 2014, and again on August 28, 2014, the Harris County District Clerk filed motions titled, “*District Clerk’s Contest Of Affidavit Of Indigence Texas Rule Of Appellate Procedure 20.1,*” and “*District Clerk’s Motion for Extension of Time for Hearing,*” and “*District Clerk’s Motion for Expedited Hearing,*” four days after the deadline to file a contest and set an oral hearing date of September 2, 2014 at 10:30 a.m. As of today, the trial court has not ruled on the District Clerk’s motions, even though the deadline to file the clerk’s record was August 25, 2014, and the Clerk, Christopher Prine, sent another notice on August 27, 2014 to the district clerk stating that the clerk’s record had not been timely filed, giving notice of an additional 15 days to file the clerk’s record before referring the matter to the Fourteenth Court of Appeals, which additional deadline would be September 11, 2014.
4. At this point in time, the trial court’s ruling isn’t necessary and moot. Pursuant to *TRAP 20.1(f)*, the Harris County District Clerk’s motions are

overruled as a matter of law and Appellant “will be allowed to proceed without advance payment of costs.” The trial court clerk’s record is necessary to decide the issues presented.

PRAYER

5. For these reasons, Appellant respectfully requests the Court to (1) GRANT his *Appellant’s Motion to Compel Clerk’s Record*, and (2) order the Harris County District Clerk to file the complete clerk’s record immediately without payment of costs, and issue any other order or writ necessary to compel compliance and (3) Appellant further requests any and all other relief to which he is entitled.

Respectfully submitted,

/s/ Mark Thuesen

Mark Thuesen, *Pro se*

P.O. BOX 540365

Houston, Texas 77254

Telephone: (585) 300-5793

Email: xtraderweb@hotmail.com

Pro se for Appellant

CERTIFICATE OF SERVICE

As required by Texas Rule of Appellate Procedure 6.3 and 9.5(b)(1), (d), (e), I hereby certify that the foregoing document has been filed in the office of the Clerk of the First Court of Appeals and a true and correct copy of the same has been provided to counsel listed below by the electronic filing manager on this 6th day of September, 2014. As a courtesy, I also sent to the legal counsel listed below an electronic mail notification with Appellant's motion attached in a PDF format.

Attorney for District Clerk:

Harrison Gregg, Assistant County Attorney

THE HONORABLE VINCE RYAN, HARRIS COUNTY ATTORNEY

1019 Congress, 16th Floor

Houston, TX 77002

Tel: 713-274-5169

Facsimile: 713-755-8924

Email: Harrison.gregg@cao.hctx.net

Attorneys for Appellee Swamplot Industries LLC, Albert and Brinsdon:

James A. Hemphill

Matthew B. Baumgartner

GRAVES, DOUGHERTY, HEARON & MOODY, P.C.

401 Congress Ave., Suite 2200

Austin, Texas 78701

Telephone: 512-480-5762

Facsimile: 512-536-9907

Email for Jim Hemphill: jhemphill@gdhm.com

Email for Matt Baumgartner: mbaumgartner@gdhm.com

/s/ Mark Thuesen

Mark Thuesen, *Pro se*

P.O. BOX 540365

Houston, Texas 77254

Telephone: (585) 300-5793

Email: xtraderweb@hotmail.com