

IN THE SUPREME COURT OF TEXAS

No. 98-0323

PALO PINTO COUNTY, TEXAS, PETITIONER

v.

EDWARD L. LEE, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE ELEVENTH DISTRICT OF TEXAS

PER CURIAM

We deny Palo Pinto's petition for review. However, we note that in discussing Rule 21 of the Texas Rules of Civil Procedure, the court of appeals held:

[T]he County presented its oral motion to strike Lee's response on the day set for the summary judgment hearing when the trial court was hearing "preliminary matters *before* we get to the motion for summary judgment." This was not an oral motion "presented during a hearing or trial."

966 S.W.2d 83, 85. We disapprove of this language to the extent the court concluded that Palo Pinto did not present its oral motion to strike during a hearing. *See* TEX. R. CIV. P. 21.

Opinion delivered: October 15, 1998