

Dismissed and Opinion filed January 13, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-01311-CV

**J. C. YOUNG, INDIVIDUALLY AND AS ADMINISTRATOR OF
THE ESTATE OF JEFFERY CLYDE YOUNG, SR., DECEDENT, Appellants**

V.

**MERCHANTS HOME DELIVERY SERVICE, INC., MERCHANTS HOME
DELIVERY SERVICE OF TEXAS, INC., FERNANDO GRANDA, AND GREGORY
DON POLLARD, Appellees**

**On Appeal from the 333rd District Court
Harris County, Texas
Trial Court Cause No. 92-04284**

OPINION

This is an appeal from a final judgment signed July 27, 1998. Appellants filed a notice of appeal on October 21, 1998. On that same day, appellants filed a motion for extension of time, until November 30, 1998, to file an affidavit of inability to pay costs on appeal. No ruling was obtained on the motion, and no affidavit was filed by the requested date. The clerk of this Court sent the parties several notices that the record had not been filed in this case. On March 1, 1999, appellant Lizzie Lovall, claiming to be the assignee of J. C. Young, Individually

and as Administrator of the Estate of Jeffery Clyde Young, Sr., Decedent, filed a motion to proceed on appeal in forma pauperis; the affidavit of indigency did not comply with the requirements of rule 20.1 of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 20.1. Appellees filed a timely response objecting to the motion to proceed in forma pauperis. This court denied appellant Lovall's motion on March 18, 1999. Appellees had also filed a contest to the motion to proceed in forma pauperis in the trial court. According to appellees, the trial court denied appellant Lovall's motion on March 19, 1999. On April 8, 1999, appellant filed a supplemental notice of appeal to appeal the trial court's ruling on the denial of indigent status.

On May 6, 1999, this court, recognizing that under the amended rules of appellate procedure, an indigent party may obtain, without payment of costs, the record pertaining to the trial court's ruling sustaining the contest to her affidavit of indigence and challenge that ruling as part of her appeal, issued an order requiring the clerk and court reporter of the 333rd District Court to prepare and file the portions of the record necessary to review the order denying appellants' motion to proceed without payment of costs. Three clerk's records, relating to appellants' affidavit of indigency, were filed on May 11, 1999, and August 10, 1999.¹ A portion of the reporter's record relating to appellants' affidavit of indigency was filed on May 28, 1999.

After reviewing the clerk's records and the reporter's record relating to appellants' motion to proceed in forma pauperis, this court denied appellants' motion on September 9, 1999. Despite this court's ruling, appellants did not pay or make arrangements to pay for the

¹ On July 1, 1999, appellants filed a request to supplement the clerk's record relating to indigency. We granted the motion in part and ordered the clerk of the 333rd District Court to prepare and file a supplemental record containing nine specific items. The clerk was advised that if any of the requested items were not part of the trial court file, the supplemental clerk's record should contain a certificate so stating. In response to this order, the clerk filed a supplemental clerk's record on August 10, 1999, containing only two of the requested items. The clerk certified that the remaining seven items "do not exist in our court files as of this date, 8/10/99. A diligent search of our various departments failed to produce any of these documents."

clerk's record or the reporter's record in this case. On December 16, 1999, this court sent a letter to all parties advising that the court would, on January 4, 2000, consider dismissing the appeal on its own motion for want of prosecution unless "any party files a response on or before December 27, 1999, showing meritorious grounds for continuing the appeal."

Following the granting of a three-day extension, appellants filed a response on December 30, 1999. In their response, appellants objected to the dismissal of the case stating that "[p]ending before this court is the Appellants' Appeal of the District Court's Denial of Lizzie J. Lovall ("the Assignee")'s indigency status." *See* TEX. R. APP. P. 42.3(b). Appellants further stated that the items the clerk claims are not in the trial court's file, have in fact been filed with the trial court and appellants cannot prosecute the indigency appeal until they are made part of the record. Appellants are apparently under the impression that the issue of appellants' request to proceed in forma pauperis in the appeal is still under consideration by the court. Appellants, however, are incorrect. As we stated above, appellants' motion to proceed in forma pauperis was denied by this court on September 9, 1999. The clerk of this court sent appellants notice of this fact by letter dated September 9, 1999.

Based on the court's rulings in this case, appellants' response demonstrates no reasonable explanation for failure to timely file either the clerk's record or the reporter's record. Accordingly, the appeal is ordered dismissed for want of prosecution.

PER CURIAM

Judgment rendered and Opinion filed January 13, 2000.

Panel consists of Justices Amidei, Anderson, and Frost.

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