

**Affirmed and Opinion filed April 12, 2001.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-99-01183-CV**  
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**DAT PHAN AND PHUONG TRAN, Appellant**

**V.**

**WEI CHIEH KAN, Appellee**

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**On Appeal from the County Court at Law No. 2  
Harris County, Texas  
Trial Court Cause No. 686,984**

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**OPINION**

In this case we address the ramifications of an appellant's failure to comply with Texas Rule of Appellate Procedure 34.6(c)(1), governing appeal on a partial reporter's record. We affirm.

**BACKGROUND**

Appellants, Dat Phan and Phuong Tran, appeal a take-nothing judgment in their favor. Phan and Tran brought suit against appellee, Wei Chieh Kan, for injuries they allegedly

sustained as pedestrians, when Kan backed his vehicle into them. The case was tried on special issues and a jury rendered judgment in favor of Phan and Tran on the issue of liability, but awarded no damages. Phan and Tran moved for entry of judgment in their favor for zero dollars in damages, plus court costs. They further requested the trial court to award interest at the rate of ten percent per annum on their court costs. The trial court entered a final judgment that Phan and Tran take nothing on their claims and that each party pay their own costs.

Phan and Tran claim the trial court erred in (1) denying their request to use the felony criminal conviction of a crime involving moral turpitude to impeach Kan's credibility at trial; (2) refusing to allow Phan to testify regarding the change in market value of the vehicle he was driving, and disallowing a special issue relating to property damage to that vehicle; (3) overruling their objection to Kan's counsel's use of photographs of the vehicles; and (4) ordering that each party pay their own court costs, rather than assessing all costs against Kan.

#### **FAILURE TO COMPLY WITH THE RULES OF APPELLATE PROCEDURE**

Phan and Tran filed this appeal on a partial reporter's record containing only the bill of exceptions relating to the trial court's evidentiary rulings. They did not, however, comply in any respect with Texas Rule of Appellate Procedure 34.6(c), governing the filing and use of a partial record. *See* TEX. R. APP. P. 34.6(c). That rule states:

If the appellant requests a partial reporter's record, the appellant *must* include in the request a statement of the points or issues to be presented on appeal and will then be limited to those points or issues.

*Id.* (emphasis added).

The purpose of filing a partial reporter's record is to (1) reduce the size and cost of the reporter's record; (2) limit the issues on appeal; and (3) invoke the presumption that the partial record contains all evidence relevant to the appeal. *CMM Grain Co., Inc. v. Ozgunduz*, 991 S.W.2d 437, 439 (Tex. App.—Fort Worth 1999, no pet.); *see* TEX. R. APP. P. 34.6(c).

However, to realize the benefits of an appeal with a partial reporter's record, the party must strictly adhere to the procedures outlined in rule 34.6(c). *Alford v. Whaley*, 794 S.W.2d 920, 923 (Tex. App.—Houston [1st Dist.] 1990, no writ).

First, the appellant must file a written request with the court reporter to prepare a partial reporter's record. TEX. R. APP. P. 34.6(b), (c). This request must identify the specific parts of the record to transcribe and what exhibits to include. TEX. R. APP. P. 34.6(b)(1). Second, along with the request for a partial reporter's record, the party must include a list of the issues that it intends to assert on appeal. TEX. R. APP. P. 34.6(c)(1). The issues to be presented on appeal need not be precise, but should describe the nature of the alleged errors with reasonable particularity. *Hilton v. Hillman Distrib. Co.*, 12 S.W.3d 846, 848 (Tex. App.—Texarkana 2000, no pet.). Lastly, the appellant must send the request to the court reporter, trial court clerk, and other parties. TEX. R. APP. P. 34.6(b); *Superior Packing, Inc. v. Worldwide Leasing & Fin., Inc.*, 880 S.W.2d 67, 70 (Tex. App.—Houston [14th Dist.] 1994, writ denied).

If a party complies with rule 34.6(c), he is entitled to the presumption that the omitted portions of the record are not relevant to the disposition of the appeal. TEX. R. APP. P. 34.6(c)(4); *Jaramillo v. Atchison, Topeka & Santa Fe Ry. Co.*, 986 S.W.2d 701, 702 (Tex. App.—Eastland 1998, no pet.). If, on the other hand, the party fails to comply with rule 34.6(c), the contrary presumption arises, and this court must instead presume that the omitted portions support the judgment rendered, whereupon the party will be left with an insufficient record. *CMM*, 991 S.W.2d at 439. Strict compliance with rule 34.6(c) is necessary to trigger the presumption that the omitted portions of the record are irrelevant to the issues on appeal and appellate disposition. *Id.*; *Christiansen v. Prezelski*, 782 S.W.2d 842, 843 (Tex. 1990) (addressing the necessity for strict compliance with rule 53(d), the predecessor to rule

34.6(c)).<sup>1</sup>

Phan and Tran did not file any formal request for the preparation of a reporter's record. Although they apparently intended to appeal on a partial reporter's record, they did not announce in their notice of appeal any intention to limit their appeal, nor did they include in their notice the issues to be presented on appeal. In fact, they did not file any document that would comply with the requirements of rule 34.6(c). *See, e.g., Hilton v. Hillman Distrib. Co.*, 12 S.W.3d 846, 847 (Tex. App.—Texarkana 2000, no pet.). Consequently, they are not entitled to the presumption that the partial reporter's record constitutes the full record. *Brown v. Brown*, 917 S.W.2d 358, 360 (Tex. App.—El Paso 1996, no writ). Rather, we must presume that the omitted portions of the record support the judgment the trial court rendered. *CMM*, 991 S.W.2d at 439.

In issues one, two and three, Phan and Tran contend that the trial court committed reversible error based on various evidentiary rulings. "A successful challenge to evidentiary rulings usually requires the complaining party to show that the judgment turns on the particular evidence excluded or admitted . . . we [then] determine whether the case turns on the evidence excluded by reviewing the entire record." *Merckling v. Curtis*, 911 S.W.2d 759, 772 (Tex. App.—Houston [1st Dist.] 1995, writ denied) (citations omitted). Thus, in order to determine whether the trial court's allegedly erroneous evidentiary rulings constituted harmful error, we

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<sup>1</sup> Furthermore, the Texas Supreme Court has stated that:

An appellant must either comply with rule 53(d) [predecessor to rule 34.6(c)] or file a complete statement of facts; otherwise, it will be presumed that the omitted portions are relevant to the disposition of the appeal. A reviewing court must examine the entire record in a case in order to determine whether an error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. When an appellant has neither complied with rule 53(d) nor filed a statement of facts, the reviewing court is unable to ascertain whether a particular ruling by the trial court is harmful in the context of the entire case.

*Christiansen*, 782 S.W.2d at 843 (citation omitted).

must examine the entire record. *Gardner v. Baker & Botts*, 6 S.W.3d 295, 298 (Tex. App.—Houston [1st Dist.] 1999, pet. denied). Because Phan and Tran failed to comply with rule 34.6(c)(1), we must presume that evidence omitted from the record would have shown that the errors, if any, were harmless. *See Hilton*, 12 S.W.3d at 848. Accordingly, issues one, two and three are overruled.

#### COURT COSTS

In their fourth and final issue, Phan and Tran claim that because the jury found in their favor on liability, they were successful parties, and thus should have been awarded court costs and interest. A trial court must award costs to the “successful party” in a lawsuit. *See* TEX. R. CIV. P. 131. A “successful party” is one who obtains a judgment “vindicating a civil claim of right.” *Operation Rescue-Nat’l v. Planned Parenthood of Houston & S.E. Tex. Inc.*, 937 S.W.2d 60, 86 (Tex. App.—Houston [14th Dist.] 1996, *aff’d as modified*, 975 S.W.2d 546 (Tex. 1998)). However, “a plaintiff is not a successful party if he obtains favorable findings on liability but not on damages.” *Crow v. Burnett*, 951 S.W.2d 894, 899 (Tex. App.—Waco 1997, pet. denied) (citing *Duff v. Union Tex. Petroleum Corp.*, 770 S.W.2d 615, 619 (Tex. App.—Houston [14th Dist.] 1989, no writ)). Here, Phan and Tran failed to prove that they were entitled to damages. Therefore, they were not successful parties at trial, and the trial court did not err in refusing to award them court costs and interest. Accordingly, issue four is overruled.

The trial court's judgment is affirmed.

/s/     **Kem Thompson Frost**  
Justice

Judgment rendered and Opinion filed April 12, 2001.

Panel consists of Justices Edelman, Frost, and Senior Chief Justice Murphy.\*\*

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

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\*\* Senior Chief Justice Paul C. Murphy sitting by assignment.