



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-23-00242-CV

**FOOD LAB, LLC D/B/A US FOOD LAB AND
MARCOS BENAVIDES, INDIVIDUALLY, APPELLANTS**

V.

PULMONAIR, LLC, APPELLEE

**On Appeal from the 166th District Court
Bexar County, Texas
Trial Court No. 2021-CI-05066, Honorable Laura Salinas, Presiding**

December 20, 2023

ORDER OF ABATEMENT AND REMAND

Before QUINN, C.J., and DOSS and YARBROUGH, JJ.

Appellants, Food Lab, LLC d/b/a US Food Labs and Marcus Benavides, appeal from the trial court's *Final Judgment*.¹ The reporter's record was originally due October 5, 2023, but was not filed. We subsequently granted the reporter two extensions to file the reporter's record due to her caseload. By letter of November 7, 2023, we admonished

¹ Originally appealed to the Fourth Court of Appeals, this appeal was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. See TEX. GOV'T CODE ANN. § 73.001.

the reporter that no further extensions would be granted and that failure to file the reporter's record by December 6 would result in the appeal being abated and the cause remanded to the trial court for further proceedings without further notice. To date, the reporter's record has not been filed and the reporter has had no further communication with this Court.

Accordingly, we abate the appeal and remand the cause to the trial court for further proceedings. See TEX. R. APP. P. 35.3(c) ("The trial and appellate courts are jointly responsible for ensuring that the appellate record is timely filed."); 37.3(a)(2) (requiring appellate courts to "make whatever order is appropriate to avoid further delay and to preserve the parties' rights" when the appellate record is not timely filed). On remand, the trial court shall determine the following:

- (1) what tasks remain to complete the filing of the reporter's record;
- (2) why the reporter has not completed the necessary tasks;
- (3) what amount of time is reasonably necessary for the completion of those tasks; and
- (4) whether the reporter can complete the tasks within the time the trial court finds reasonable.

Should the trial court determine that the reporter will require more than thirty days to complete, certify, and file the reporter's record, it shall arrange for a substitute reporter to do so. The trial court is directed to enter such orders necessary to address the aforementioned questions. So too shall it include its findings on those matters in a supplemental clerk's record and cause that record to be filed with this Court by January 19, 2024.

Should the reporter file the record on or before the date the trial court acts per our directive, she is directed to immediately notify the trial court of the filing, in writing, whereupon the trial court shall not be required to take any further action.

It is so ordered.

Per Curiam