

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-10-00748-CV

Nicholas Xenos, Appellant

v.

Mursch Partners, L.P., Appellee

**FROM COUNTY COURT AT LAW NO. 1 OF TRAVIS COUNTY
NO. C-1-CV-09-002816, HONORABLE CHUCK MILLER, JUDGE PRESIDING**

ORDER

PER CURIAM

This order concerns issues raised by appellant Nicholas Xenos's Motion for Consolidation of Record from Application for Writ of Mandamus and his Second Motion to Extend Time for Filing Record on Appeal.

Appellee asserts that the records from the mandamus are irrelevant to the appeal and that consolidation is unnecessary. Appellee notes that we may take judicial notice of records from cases between the same parties in the same or related proceeding. *See Douglas v. American Title, Co.*, 196 S.W.3d 876, 878 n.1 (Tex. App.—Houston [1st Dist.] 2006, no pet.); *In re Y.M.A.*, 111 S.W.3d 790, 792 (Tex. App.—Fort Worth 2003, no pet.). We hereby take judicial notice of the following reporter's records from *In re Nicholas Xenos*, appellate cause number 03-09-00418-CV:

April 23, 2009
May 15, 2009

Motion to Quash
Motion to Quash

June 23, 2009
July 1, 2009

Motion to Quash, Motion for Scheduling Order
Motion to Recuse, Motion for Sanctions

We also hereby take judicial notice of the Appendix to Petition for Writ of Mandamus from the same appellate cause number 03-09-00418-CV. We note that this appendix is not a clerk's record, but rather a collection of documents Xenos's counsel certified under oath that she either obtained from the trial court's file or "prepared and filed, or mailed, or received" during her representation of Xenos in this matter. To save time and expense of additional record preparation, we will permit the parties to refer to these documents as they are relevant to the issues in this appeal as if this were a properly designated and filed clerk's record. An electronic copy of the reporter's records and the Appendix to Petition for Writ of Mandamus in *In re Xenos*, appellate cause number 03-09-00418-CV, shall be made part of the record in this appellate cause.

Xenos shall, by April 18, 2011, take the following steps with regard to preparation of the appellate record: (1) file a written designation specifying items from the trial court clerk's record that are necessary to this appeal to be included in a clerk's record, and must file that designation with the trial court's clerk (*see* Tex. R. App. P. 34.5); (2) request in writing from the official reporter, filing a copy with the trial court clerk, preparation of any other necessary portions of the reporter's record that are not part of the record in cause number 03-09-00418-CV (*see* Tex. R. App. P. 34.6); and (3) pay or make arrangements to pay for the costs of preparing the additional records. If Xenos does not intend to request that additional records be compiled and filed with this Court, he shall file a notice to that effect with this Court by April 8, 2011.

If Xenos timely and properly requests preparation of the record and timely and properly pays or makes arrangements to pay for the record, those portions of the record shall be filed with this Court's clerk on or before May 18, 2011. Appellant's brief will be due 30 days after the last portion of the record designated for preparation is filed. *See* Tex. R. App. P. 38.6(a).

If Xenos chooses not to request preparation of additional portions of the record, or fails to timely and properly request preparation of additional portions of the record, or fails to timely and properly pay or make arrangements to pay for preparation of the record, Xenos's brief will be due to be filed on May 18, 2011. The case will be considered on the record on file and judicially noticed.

We conclude that the substance of this order renders the requests for relief in Xenos's motions moot. We dismiss as moot Xenos's Motion for Consolidation of Record from Application for Writ of Mandamus and his Second Motion to Extend Time for Filing Record on Appeal. To the extent that the requests for relief in the motions are not moot, the motions are denied.

It is ORDERED on March 25, 2011.

Before Justices Puryear, Pemberton and Rose