

NO. 12-17-00155-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

<i>IN THE INTEREST OF</i>	§	<i>APPEAL FROM THE 321ST</i>
<i>A.E. AND G.R.,</i>	§	<i>JUDICIAL DISTRICT COURT</i>
<i>CHILDREN</i>	§	<i>SMITH COUNTY, TEXAS</i>

***MEMORANDUM OPINION
PER CURIAM***

R.R. and M.E.¹ are the parents of the child, G.R. On January 9, 2017, the Department of Family and Protective Services filed an original petition for protection of A.E.² and G.R., for conservatorship, and for termination of R.R.’s parental rights to G.R. On March 20, R.R. filed a “statement of inability to afford payment of court costs or an appeal bond.” R.R. also filed a “counterclaim and third party joinder.” The Department sought dismissal of R.R.’s counterclaim and third party joinder. The trial court set a hearing to consider both R.R.’s statement of inability to pay costs and the Department’s motion to dismiss. On May 4, R.R. failed to appear at the hearing. Accordingly, the trial court granted the Department’s motion and dismissed R.R.’s counterclaim and third party joinder. The trial court verbally denied the statement of inability to pay for want of prosecution. R.R. appealed the denial of his statement of inability to pay costs and the grant of the Department’s motion to dismiss.

The Department filed a motion to dismiss R.R.’s appeal of the denial of his statement of inability to pay on grounds that the trial court did not issue an order requiring R.R. to pay costs; thus, the Department contends there is no order subject to appellate review. In his response, R.R. maintains that there is an order for appellate review because: (1) the trial court made a written

¹ M.E. is not a party to this appeal.

² A.E. is the child of M.E. and A.A., and is not a subject of this appeal.

notation on the statement of inability to pay costs, and (2) the district clerk subsequently requested the filing fee.

Texas Rule of Civil Procedure 145 states that a “party who files a Statement of Inability to Afford Payment of Court Costs cannot be required to pay costs except by order of the court as provided by this rule.” TEX. R. CIV. P. 145(a). The declarant must provide evidence of his inability to afford costs, but the trial court may order the declarant to pay costs notwithstanding the statement of inability to pay. TEX. R. CIV. P. 145(e), (f). The declarant may challenge an order issued by the trial court by filing a motion in the appropriate court of appeals. TEX. R. CIV. P. 145(g)(1).

In this case, the record does not indicate that the trial court signed an order requiring R.R. to pay costs. See TEX. R. CIV. P. 145(f). On the face of R.R.’s statement of inability to pay costs, a handwritten notation states, “denied for want of prosecution. Didn’t appear. C.” On May 5, the district clerk notified R.R. that his statement of inability to pay had been denied and requested that he remit the \$50 filing fee to avoid dismissal of his case. To be effective, however, an order must be signed by the trial court judge. See *In re Bill Heard Chevrolet, Ltd.*, 209 S.W.3d 311, 314-15 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding). While the record indicates that the trial court denied R.R.’s statement of inability to pay costs for want of prosecution, it does not contain an order signed by the trial court that requires R.R. to pay costs. Accordingly, because the trial court did not sign an order in accordance with Rule 145, there is no order for us to review. See *In the Interest of K.V.*, No. 05-17-00251-CV, 2017 WL 1536496, at *1 (Tex. App.—Dallas Apr. 26, 2017, no pet.) (mem. op.) (stating that, absent a judgment or other appealable order, there is nothing for the appellate court to review). For this reason, we **grant** the Department’s motion to dismiss, and we **dismiss** R.R.’s appeal of the denial of his statement of inability to pay costs for **want of jurisdiction**. See TEX. R. APP. P. 42.3(a). This dismissal does not affect R.R.’s appeal from the trial court’s decision granting the Department’s motion to dismiss R.R.’s counterclaim and third party joinder.³

Opinion delivered June 21, 2017.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)

³ The Department’s motion to dismiss R.R.’s counterclaim and third party joinder appears to be in the form of a plea to the jurisdiction, the granting of which is an appealable interlocutory order. See TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(8) (West Supp. 2016).



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 21, 2017

NO. 12-17-00155-CV

IN THE INTEREST OF A.E. AND G.R., CHILDREN

Appeal from the 321st District Court
of Smith County, Texas (Tr.Ct.No. 16-1040-D)

THIS CAUSE came to be heard on the appellate record and the Appellee's motion to dismiss; and the same being considered, it is the opinion of this Court that R.R.'s appeal from the denial of his statement of inability to pay costs should be dismissed for want of jurisdiction.

It is therefore ORDERED, ADJUDGED and DECREED by this Court that the appeal be, and the same is, hereby **dismissed, in part, for want of jurisdiction**; and that this decision be certified to the court below for observance. This dismissal does not affect the appeal from the granting of the motion to dismiss R.R.'s counterclaim and third party joinder.

By *per curiam* opinion.

Panel consisted of Worthen, C.J., Hoyle, J. and Neeley, J.