

COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

JUAN HURTADO, RAUDIN	§	No. 08-09-00127-CV
MCCORMICK, INC. D/B/A RAILCREW	§	
XPRESS, AND RAILCREW XPRESS,	§	Appeal from
L.L.C.,	§	341st District Court
Appellant,	§	of Webb County, Texas
v.	§	(TC # 2007-CVE-002205-D3)
MARY HERNANDEZ,	§	
Appellee.		

MEMORANDUM OPINION

Pending before the Court is a joint motion to dispose of the appeal based on the parties' agreement pursuant to TEX.R.APP.P. 42.1(a)(2). The joint motion requests that we vacate the trial court's judgment and remand the cause to the trial court for entry of a final judgment and dismissal with prejudice. The parties also request that we release the supersedeas bond filed in the 341st District Court of Webb County. Finally, the parties request that we dismiss the appeal. Because we conclude that we are not authorized to grant all of the relief request by the joint motion, we grant the motion in part and deny in part.

Rule 43.2 specifies the types of judgments a court of appeals is authorized to enter. TEX.R.APP.P. 43.2. It provides that a court of appeals may:

- (a) affirm the trial court's judgment in whole or in part;
- (b) modify the trial court's judgment and affirm it as modified;
- (c) reverse the trial court's judgment in whole or in part and render the judgment that the trial court should have rendered;

- (d) reverse the trial court's judgment and remand the case for further proceedings;
- (e) vacate the trial court's judgment and dismiss the case; or
- (f) dismiss the appeal.

Under Rule 43.2(e), we may vacate the trial court's judgment and dismiss the underlying suit. Under Rule 43.2(f), we are authorized to dismiss the appeal. We do not have authority, however, to both dismiss the appeal and vacate the trial court's judgment because the two actions are incompatible.

Rather than denying the joint motion outright, we will grant the request to vacate the trial court's judgment and remand the cause for further proceedings as agreed by the parties. We also grant the request to release the supersedeas bond filed in the 341st District Court of Webb County. We deny the request to dismiss the appeal. In accordance with the parties' agreement, costs are taxed against the party incurring same. *See* TEX.R.APP.P. 42.1(d).

June 23, 2010

ANN CRAWFORD McCLURE, Justice

Before Chew, C.J., McClure, and Rivera, JJ.