

Opinion issued August 25, 2016



In The
Court of Appeals
For The
First District of Texas

NO. 01-14-00896-CV

**THEAOLA ROBINSON AND BENJI'S SPECIAL EDUCATIONAL
ACADEMY, INC., Appellants**

V.

**CHRISTOPHER L. TRITICO, RON S. RAINEY, AND MICHAEL
ESSMYER, JR. D/B/A ESSMYER, TRITICO & RAINEY L.L.P., Appellees**

**On Appeal from the 125th District Court
Harris County, Texas
Trial Court Case No. 2013-26582**

MEMORANDUM OPINION

On March 12, 2015, the Court issued an opinion dismissing this appeal by appellants, Theola Robinson and Benji's Special Educational Academy, for nonpayment of required fees. *See* TEX. R. APP. P. 5, 20.1. Prior to the issuance of

our opinion, neither appellants nor the trial court clerk provided us with an affidavit of indigence filed by appellants, nor did the record contain any indication that an affidavit of indigence had been filed. Appellants further failed to respond to the court's notices that the appeal was subject to dismissal unless appellants paid the required fees or established indigence. On April 13, 2015, after the appeal was dismissed, appellants filed a "Motion to Vacate Judgment or Set Aside Judgment and Verified Motion to Reinstate Appeal" averring that appellants filed an affidavit of indigence with the trial court in January 2015. Construing appellants' motion as a motion for rehearing, we withdrew our opinion dismissing the appeal and reinstated the case on the Court's active docket. A clerk's record was ordered to be filed containing, among other things, the affidavit of indigence as well as any pleadings regarding any contest to the affidavit.

The clerk's record that was subsequently filed with this Court contains a judgment and order of the trial court sustaining the contest to appellants' affidavit of indigence. Appellants have not filed a motion with this Court seeking review of the trial court's order sustaining the contest. *See* TEX. R. APP. P. 20.1(j). Appellants thus have failed to establish indigence for purposes of appellate costs and have not paid the required fees. *See* TEX. R. APP. P. 5, 20.1; *see also* TEX. GOV'T CODE ANN. §§ 51.207, 51.941(a) (West 2013), 101.041 (West Supp. 2015); Fees Charged in the

Supreme Court, in Civil Cases in the Courts of Appeals, and Before the Judicial Panel on Multi-District Litigation, Misc. Docket No. 15-9158 (Tex. Aug. 28, 2015).

Accordingly, we dismiss the appeal for nonpayment of all required fees. *See* TEX. R. APP. P 5, 42.3(c). We dismiss any pending motions as moot.

PER CURIAM

Panel consists of Justices Keyes, Bland, and Massengale.