Motion Granted; Appeal Dismissed and Memorandum Majority and Dissenting Opinions filed August 12, 2021.



In The

Fourteenth Court of Appeals

NO. 14-20-00399-CV

IVAN PEREZ, Appellant

V.

CITY OF HOUSTON, Appellee

On Appeal from the 127th District Court Harris County, Texas Trial Court Cause No. 2019-70048

MEMORANDUM DISSENTING OPINION

The prayer to appellant's motion to dismiss the appeal includes the following: "For these reasons, Appellant asks the Court to grant this Unopposed Motion to Dismiss, with each party bearing own costs on appeal." The certificate of conference reflects that appellee's counsel is not opposed to the motion.

The court properly grants the motion. But in the judgment dismissing the appeal, the Court errs in the taxation of costs. Texas Rule of Appellate Procedure 42.1(d) states, "Absent agreement of the parties, the court will tax costs against the appellant." Tex. R. App. P. 42.1(d).

I could write about why "not opposed" is different from "agree." I suspect most lawyers would be legitimately concerned if an appellate court held "not opposed" was synonymous with "agree." I also suspect a lot of lawyers would stop saying they were "not opposed," they would not necessarily "agree," and they would likely offer "no response." That would be a big waste of time.

But a picture can be worth the proverbial 1,000 words:

CERTIFICATE OF CONFERENCE
I hereby certify that on June 1, 2021 , we asked appellee's counsel Collyn Peddie whether she was opposed to the foregoing motion to dismiss. Ms. Peddie—
Notified me that she is OPPOSED to the motion. X Notified me that she is not opposed to the motion. Notified me that she is AGREED to the motion. Did not respond.
/s/ Zachary Smith
ZACHARY SMITH

Nothing indicates the City agreed "with each party bearing own costs on appeal." The court is simply wrong to disregard Rule 42.1(d).

I dissent to the portion of the judgment taxing costs against the City of Houston without its agreement.

/s/ Charles A. Spain Justice

Panel consists of Justices Wise, Jewell, and Spain (Spain, J., dissenting).