

NO. 07-02-0265-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL E
OCTOBER 1, 2002

BETTY ANN NEWBY, APPELLANT

V.

DAN MOSER, INDIVIDUALLY AND AS TRUSTEE; MOSER INVESTMENTS;
THE ESTATE OF LON MOSER, DECEASED; AND SHERIA EVANS, APPELLEES

FROM THE 84TH DISTRICT COURT OF HUTCHINSON COUNTY;
NO. 35,167; HONORABLE JACK D. YOUNG, JUDGE

Before REAVIS and JOHNSON, JJ. and BOYD, S.J.*

DISMISSAL

Appellant Betty Ann Newby filed an accelerated notice of appeal challenging the trial court's denial of her application for a temporary injunction and other motions. On June

*John T. Boyd, Chief Justice (Ret.), Seventh Court of Appeals, sitting by assignment.

26, 2002, the trial court sustained the contest filed by two court reporters to Newby's affidavit of indigence. On July 30, 2002, Newby filed a *pro se* document in this Court seeking an extension of time on behalf of the trial court clerk contending that the trial court clerk should not be permitted to request payment for the record because she did not file a contest to her affidavit of indigence. However, because the motion was not accompanied by the required filing fee, no ruling will be made regarding that motion.

By letter dated September 13, 2002, this Court notified Newby to make satisfactory arrangements to pay for the clerk's record within ten days or the appeal would be subject to dismissal. Although the Texas Rules of Appellate Procedure now impose the duty of filing the record with the trial court clerk, Newby must pay the clerk's fee or make satisfactory arrangements with the clerk to pay the fee. Tex. R. App. P. 35.3(a)(2). Pursuant to Rule 37.3(b), this Court may dismiss the appeal for want of prosecution if, due to appellant's fault, the trial court clerk fails to file the clerk's record. Furthermore, under Rule 42.3(c) this Court may dismiss an appeal, after giving ten days notice, for Newby's failure to comply with a notice from the Clerk requiring a response within a specified time.

Accordingly, because Newby did not comply with this Court's directive, the appeal is hereby dismissed for want of prosecution and for failure to comply with a notice from the Clerk of this Court. Tex. R. App. P. 42.3(b) & (c).

Don H. Reavis
Justice

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