

NO. 07-05-0340-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL A
FEBRUARY 10, 2006

KERWIN GIBBS, APPELLANT

V.

ALLSUP'S CONVENIENCE STORES, INC. AND
FEDERATED MUTUAL INSURANCE COMPANY,
FEDERATED INSURANCE AN ASSUMED NAME
OF FEDERATED MUTUAL INSURANCE COMPANY
AND/OR FEDERATED SERVICES INSURANCE COMPANY
AND DAWN WILLEFORD, APPELLEES

FROM THE COUNTY COURT AT LAW NO. 3 OF LUBBOCK COUNTY;
NO. 2005-597,010; HONORABLE PAULA LANEHART, JUDGE

Before REAVIS and CAMPBELL and HANCOCK, JJ.

ON MOTION FOR REHEARING

By opinion dated December 16, 2005, this court dismissed appellant, Kerwin Gibbs' appeal for want of prosecution pursuant to Rule 38.8(a)(1) and 42.3(b), (c) of the Texas Rules of Appellate procedure. By motion for rehearing, appellant contends all matters in controversy were settled between the parties prior to this court's order. The pleadings and

the motion for dismissal filed with the petition for rehearing confirm this contention. Accordingly, the motion for rehearing is granted and the case is reinstated.

Appellant has filed before this court a motion to dismiss the appeal, citing settlement of all matters in controversy. Appellee has confirmed the settlement by a responsive pleading. From the record it is clear that appellant does not desire to pursue the appeal.

Without passing on the merits of the appeal, we grant the motion and dismiss the appeal. TEX. R. APP. P. 42.1(a). Pursuant to the motion, costs are to be assessed against the party incurring them. Having dismissed the appeal by agreement of the parties, no motion for rehearing will be entertained and our mandate will issue forthwith.

Mackey K. Hancock
Justice