

NO. 07-09-0017-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL C
JUNE 4, 2009

ARVELL RABE, A.J. RABE, INC., D/B/A
EASTEX LIVESTOCK AND HAY COMPANY, APPELLANTS

V.

LUBBOCK FEEDERS, L.P. AND KNOXVILLE
LIVESTOCK AUCTION CENTER, INC., APPELLEES

FROM THE 72ND DISTRICT COURT OF LUBBOCK COUNTY;
NO. 2008-544,279; HONORABLE RUBEN REYES, JUDGE

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

MEMORANDUM OPINION

On August 6, 2008, Appellee, Lubbock Feeders, Inc., filed an interpleader action against Appellants, Arvell Rabe and A.J. Rabe, Inc., d/b/a Eastex Livestock and Hay Company (collectively Rabe), and Appellee, Knoxville Livestock Auction Center, Inc.

(hereinafter Knoxville), due to multiple conflicting claims being asserted by Rabe and Knoxville to funds arising from the sale of cattle. In conjunction with the filing of that proceeding, Lubbock Feeders deposited into the registry of the trial court the disputed proceeds of \$56,177.15. Prior thereto, on July 8, 2008, Knoxville had obtained a Tennessee judgment against Rabe in the sum of \$78,220.56, plus interest and costs of court. Knoxville filed the foreign judgment in the interpleader action. Upon Knoxville's motion for summary judgment, the trial court ordered that it recover the disputed funds, less attorney's fees and costs due Lubbock Feeders. Rabe, proceeding pro se, filed a notice of appeal challenging the trial court's summary judgment. The appellate record was filed on March 30, 2009, and Rabe's brief was due to be filed on April 29, 2009.

On May 1, 2009, Rabe filed a Motion for Continuance requesting time to retain legal counsel. Knoxville objected to the motion and requested dismissal of the appeal for Rabe's failure to file a brief. Lubbock Feeders subsequently filed a Motion to Dismiss Appeal for Want of Prosecution pursuant to Tex. R. App. P. 38.8(a)(1). By letter dated May 13, 2009, this Court advised the parties that dismissal for failure to file a brief was not permitted without affording the noncompliant party an opportunity to cure the defect. See Tex. R. App. P. 38.8(a)(1) & 42.3(b). Rabe's Motion for Continuance was denied and he was directed to file his brief by May 26, 2009, with the proviso that failure to do so would result in dismissal of this appeal.

Rabe did not respond to this Court's notice of May 13, 2009. Neither was the brief filed as directed by that notice. Consequently, we grant Lubbock Feeders's Motion to Dismiss Appeal for Want of Prosecution.

Accordingly, the appeal is dismissed for want of prosecution and failure to comply with an order of the Court. Tex. R. App. P. 42.3(b) & (c).

Patrick A. Pirtle
Justice