

NO. 07-11-0108-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL D
SEPTEMBER 15, 2011

DOS PANSONCITOS, INC., JIM BULLARD AND JOHN HEDRICK, APPELLANTS

V.

WILLIAM T. SISCO, M.D., APPELLEE

FROM THE 99TH DISTRICT COURT OF LUBBOCK COUNTY;
NO. 2009-548,044; HONORABLE WILLIAM SOWDER, JUDGE

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

ORDER ON MOTION TO ABATE

Appellants, Dos Pansoncitos, Inc., Jim Bullard and John Hedrick, perfected this appeal from the trial court's judgment in favor of Appellee, William T. Sisco, M.D. The appellate record has been filed and Appellants' brief was originally due to be filed on June 8, 2011. Two motions for extensions of time have been granted extending the deadline to August 31, 2011. On September 6, 2011, Appellants filed a *Motion to Abate* by which they request abatement of this appeal while the parties are involved in

settlement negotiations.¹ Appellee filed his *Objection to Motion to Abate* on September 8, 2011.² For the reasons expressed herein, we overrule Appellants' *Motion to Abate*.

Appellants represent that due to conflicting trial schedules of the negotiating attorneys, they have been unable to facilitate an agreement. Relying on Rule 42.1(a)(2)(c) of the Texas Rules of Appellate Procedure, they request an abatement of thirty days in which to arrive at an agreement with Appellee.

Appellee has filed an objection to the motion indicating that "settlement negotiations' do not appear to be beneficial at this time." Appellee states that calculations for the amount due on the judgment were presented to Appellants' counsel via electronic mail on August 25, 2011, but that no response was received.

Based on Appellee's indication that settlement negotiations appear unsuccessful at this time, we overrule Appellants' *Motion to Abate*. Appellants' brief is past due. This Court *sua sponte* grants an extension of time in which to file Appellants' brief to October 10, 2011. This order serves as notice pursuant to Rule 42.3(b) of the Texas Rules of Appellate Procedure that failure to timely file Appellants' brief will result in dismissal of this appeal for want of prosecution. See Tex. R. App. P. 38.8(a)(1).

It is so ordered.

Per Curiam

¹The Certificate of Conference in the motion required by Rule 10.1(a)(5) of the Texas Rules of Appellate Procedure reflects that opposing counsel was unavailable to determine opposition to the motion.

²We find it unnecessary to wait ten days to rule on the motion since Appellee filed a response. See Tex. R. App. P. 10.3(a).