



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-16-00055-CV

MARK LITTLE, Appellant

V.

THE SWAN ASBESTOS AND SILICA SETTLEMENT TRUST, Appellees

On Appeal from the 196th District Court
Hunt County, Texas
Trial Court No. 83004

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

Mark Little filed a notice of appeal in the 196th Judicial District Court of Hunt County on August 10, 2016, and in the Fifth Court of Appeals in Dallas on August 11, 2016. Hunt County lies in two different appellate districts. TEX. GOV'T CODE ANN. § 22.201(f), (g) (West Supp. 2016). Litigants from Hunt County may choose to file a notice of appeal in either the Fifth or the Sixth Court of Appeals. *See Miles v. Ford Motor Co.*, 914 S.W.2d 135, 137 n.4 (Tex. 1995). Notwithstanding the fact that he personally filed his notice in the Fifth Court of Appeals, Little failed to indicate on the face of the notice whether he desired to prosecute the appeal in the Fifth or the Sixth Court of Appeals. Consequently, the Hunt County District Clerk's Office forwarded Little's notice to the Sixth Court of Appeals on August 12, 2016. As a result, Little's appeal is now pending in both the Fifth and the Sixth Courts of Appeals.

Under such circumstances, the appellate court with dominant jurisdiction is the court in which the notice of appeal was first filed. *Id.* at 138; *Capehart v. State*, 257 S.W.3d 814, 815 (Tex. App.—Texarkana 2008, no pet.). In this case, then, the Fifth Court of Appeals is the court with dominant jurisdiction.

Pending before this Court is Little's motion to voluntarily dismiss his appeal in this Court. Because the Fifth Court of Appeals is the court with dominant jurisdiction and because Little has expressed his desire to proceed with his appeal in that court, his motion is well taken. Pursuant to Rule 42.1(a)(1) of the Texas Rules of Appellate Procedure, the motion is granted. *See* TEX. R. APP. P. 42.1(a)(1).

Accordingly, we dismiss this appeal.

Josh R. Morriss, III
Chief Justice

Date Submitted: October 18, 2016
Date Decided: October 19, 2016