



**IN THE
TENTH COURT OF APPEALS**

No. 10-08-00363-CV

**JOEL WITHROW AND JOEL WITHROW
D/B/A HOWARD GIN,**

Appellant

v.

HELENA CHEMICAL COMPANY,

Appellee

**From the 40th District Court
Ellis County, Texas
Trial Court No. 75290**

MEMORANDUM OPINION

This appeal was abated for mediation on November 5, 2008. The parties were ordered to attempt to agree upon a mediator within 14 days from the date of the abatement order. It has been more than 14 days, and the parties have not notified the Court of an agreed mediator for this appeal or that no mediator could be agreed upon.

By letter, the Clerk of this Court notified appellants that they had 7 days from the date of the notice to provide a written status report regarding this appeal. The Clerk warned that if a status report which included the name of the agreed upon mediator or

a statement that no mediator could be agreed upon was not timely received, this appeal would be dismissed for want of prosecution. *See* TEX. R. APP. P. 42.3(b). It has been more than 7 days and we have not received a status report.

Accordingly, this appeal is dismissed.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Vance, and
Justice Reyna
(Justice Vance dissents with a note) *
Appeal dismissed
Opinion delivered and filed December 23, 2008
[CV06]

*“(Justice Vance dissents from the involuntary dismissal.)”