



**IN THE
TENTH COURT OF APPEALS**

No. 10-10-00413-CV

**IN THE MATTER OF
THE MARRIAGE OF
DAVID WAYNE HUTCHINS
AND
TERESA LYNN HUTCHINS**

**From the 77th District Court
Freestone County, Texas
Trial Court No. 10-298A**

MEMORANDUM OPINION

David Wayne Hutchins is in prison and filed for a divorce in the county where he is incarcerated. The trial court dismissed Hutchins's petition for divorce because Hutchins is not a resident of the county. *See* TEX. FAM. CODE ANN. § 6.301 (West 2006). We affirm.

Hutchins has not paid the filing fee in this appeal but a motion to proceed as a pauper has been filed. The court reporter and the trial court clerk have not yet been presented with the opportunity to contest the motion. Briefs have not yet been filed. We have reviewed the record and have determined that we could wrestle with this appeal for another three to four months before affirming it. However, for the purpose

of expediting the disposition of this appeal, we suspend operation of the Rules of Appellate Procedure under Rule 2 of those rules and proceed to a disposition of this appeal. *See* TEX. R. APP. P. 2.

In response to questions proposed by the trial court after Hutchins filed his divorce petition, Hutchins expressed no interest in remaining in Freestone County, the county of his imprisonment, once he is released from prison. The trial court does not abuse its discretion in dismissing a petition for divorce when an inmate expresses no intent to remain in the county of his imprisonment after his release. *Gonzales v. Gonzales*, No. 12-03-00225-CV, 2003 Tex. App. LEXIS 10774 (Tex. App.—Tyler Dec. 23, 2003, no pet.) (mem. op.); *see In re Marriage of Harvey*, No. 10-05-00235-CV, 2005 Tex. App. LEXIS 4452 (Tex. App.—Waco June 8, 2005, no pet.). Accordingly, we affirm the judgment of the trial court.

Absent a specific exemption, the Clerk of the Court must collect filing fees at the time a document is presented for filing. TEX. R. APP. P. 12.1(b); Appendix to TEX. R. APP. P., Order Regarding Fees (Amended Aug. 28, 2007, eff. Sept. 1, 2007). *See also* TEX. R. APP. P. 5; 10TH TEX. APP. (WACO) LOC. R. 5; TEX. GOV'T CODE ANN. § 51.207(b); § 51.941(a) (West 2005); and § 51.208 (West 2009). Under these circumstances, we suspend the rule and order the Clerk to write off all unpaid filing fees in this case. TEX. R. APP. P. 2. The write-off of the fees from the accounts receivable of the Court in no way eliminates or reduces the fees owed by Hutchins.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Reyna, and
Justice Davis

Affirmed

Opinion delivered and filed December 22, 2010
[CV06]