



**IN THE
TENTH COURT OF APPEALS**

No. 10-12-00133-CV

IN THE INTEREST OF C.S. AND G.S., CHILDREN

**From the 12th District Court
Leon County, Texas
Trial Court No. FL-11-26**

ORDER

An order terminating appellants' parental rights to their children, C.S. and G.S. was signed on April 4, 2012. Appellants' notice of appeal was filed on April 16, 2012. The reporter's record was due April 26, 2012. *See* TEX. R. APP. P. 28.4(a)(1); 35.1(b). The clerk's record was filed on May 31, 2012. On July 5, 2012, we received notice from the reporter that she had previously been unaware of the filing deadline for the reporter's record and requested an extension of time to July 15, 2012 to prepare the reporter's record. Her request was granted. However, when the reporter's record had not been filed by the first part of August, 2012, the Clerk of this Court contacted the reporter who informed the Clerk that the reporter's record would be placed in the mail by August 10, 2012. A partial reporter's record was filed August 20, 2012; however, we were notified

that an electronic file containing a portion of the record has been corrupted and the reporter is unable to prepare a reporter's record from it. It is our understanding that the final termination hearing (approximately 40 minutes) is the portion of the proceeding that is in the now corrupted file.

When a reporter's record has been timely requested and has been lost or destroyed, an appellant is entitled to a new trial under the following circumstances:

1. if, without the appellant's fault, a significant exhibit or a significant portion of the court reporter's notes and records has been lost or destroyed or--if the proceedings were electronically recorded--a significant portion of the recording has been lost or destroyed or is inaudible;
2. if the lost, destroyed, or inaudible portion of the reporter's record, or the lost or destroyed exhibit, is necessary to the appeal's resolution; and
3. if the lost, destroyed or inaudible portion of the reporter's record cannot be replaced by agreement of the parties, or the lost or destroyed exhibit cannot be replaced either by agreement of the parties or with a copy determined by the trial court to accurately duplicate with reasonable certainty the original exhibit.

TEX. R. APP. P. 34.6(f). A court reporter's notes and records, or portions thereof, can be considered "lost" only if the missing portions of the appellate record are irretrievable.

Johnson v. State, 151 S.W.3d 193, 196 (Tex. Crim. App. 2004).

Accordingly, this appeal is abated for the trial court to conduct a hearing within 7 days from the date of this Order to determine whether:

1. without appellants' fault, a significant portion of the court reporter's notes and records have been lost or destroyed;

2. the lost or destroyed portion of the reporter's record is necessary to the appeal's resolution; and
3. the lost or destroyed portion of the reporter's record cannot be replaced by agreement of the parties.

Concurrent with the hearing to determine the above listed items, the trial court shall also conduct a hearing to determine whether the underlying matter is amenable to mediation, and if so, refer the matter to mediation. TEX. CIV. PRAC. & REM. CODE ANN. § 154.002 (West 2011); TEX. FAM. CODE ANN. § 153.0071(c) (West 2008).

Within 7 days from the date of the hearing, the trial court shall prepare and tender to the trial court clerk written findings of fact and conclusions of law and a written order, signed by the trial court, consistent with this Order. The trial court clerk shall prepare and file a supplemental clerk's record containing a copy of the trial court's findings of fact and conclusions of law and the trial court's written order with the Clerk of this Court within 7 days from the date the findings, conclusions, and order are tendered to the trial court clerk. The reporter responsible for recording the hearing shall prepare and file a supplemental reporter's record of the hearing with the Clerk of this Court within 7 days from the date of the hearing.

PER CURIAM

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Appeal abated
Order issued and filed August 30, 2012