

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-08-00022-CV

Diana L. Morris a/k/a Diana Aguilar and Phillip Morris, Appellants

v.

Juan Aguilar and Margarita Aguilar, Appellees

**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 250TH JUDICIAL DISTRICT
NO. D-1-FM-98-000103, HONORABLE DERWOOD JOHNSON, JUDGE PRESIDING**

MEMORANDUM OPINION

Subsequent to this cause being reinstated, the court reporter informed this Court that the Travis County District Clerk's office has been unable to locate the exhibits for the trial in this case, that the exhibits are necessary for her to complete an accurate record, and that she cannot file her part of the reporter's record without the exhibits.

Under the rules of appellate procedure, an appellant is entitled to a new trial if he timely requested a reporter's record but a significant portion of the record has been lost or destroyed through no fault of the appellant's and if the lost or destroyed portion is necessary to the resolution of the appeal and cannot be replaced. *See* Tex. R. App. P. 34.6(f). Accordingly, the district court is ordered to hold a hearing to determine whether the missing portions of the record are lost or destroyed and, if so, whether a new trial is warranted under the circumstances. The district court is ordered to make appropriate findings and recommendations, and a supplemental record from this

hearing, including copies of all findings and recommendations as well as the court reporter's notes, shall be forwarded to the clerk of this Court no later than May 31, 2013.

David Puryear, Justice

Before Justices Puryear, Pemberston, and Rose

Abated

Filed: April 26, 2013