

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

ON MOTION FOR REHEARING

NO. 03-11-0067-CV

Ruth Wheeler, Appellant

v.

John Collier Hinson, Appellee

**FROM COUNTY COURT AT LAW NO. 1 OF TRAVIS COUNTY
NO. C-1-CV-10-00825, HONORABLE J. DAVID PHILLIPS, JUDGE PRESIDING**

MEMORANDUM OPINION

We withdraw the opinion and judgment issued herein on May 19, 2011, and substitute the following opinion in place of the earlier one.

Appellant Ruth Wheeler filed her notice of appeal on February 7, 2011. On February 22, 2011, this Court received notice that although Wheeler was found not indigent, she continued to request the district clerk's office of Travis County to prepare a free record. On February 23, 2011, this Court received a copy of a district court order sustaining a contest to Wheeler's affidavit of inability to pay costs. Wheeler has not challenged this order. On April 26, 2011, the Clerk of this Court sent notice to Wheeler requesting that she make arrangements for the clerk's record and submit a status report regarding this appeal. The Clerk also notified appellant that her appeal may be dismissed for want of prosecution if she did not respond to this Court by May 6, 2011. *See* Tex. R. App. P. 37.3(b) (appellate court may dismiss appeal for want of

prosecution if appellant failed to pay or make arrangements to pay the clerk's fee for preparing the clerk's record unless appellant was entitled to proceed without payment of costs). On May 6, 2011, Wheeler filed a letter with this Court stating that she has not made arrangements for the clerk's record and suggesting that she does not intend to unless this Court assures her that it has jurisdiction to address the merits of her appeal. Because Wheeler has failed to pay or make arrangements to pay the clerk's fee for preparing the clerk's record and is not entitled to proceed without payment of costs, we dismiss this appeal for want of prosecution. Tex. R. App. P. 37.3(b).

J. Woodfin Jones, Chief Justice

Before Chief Justice Jones, Justices Henson and Goodwin

Dismissed for Want of Prosecution on Motion for Rehearing

Filed: July 13, 2011