



NUMBER 13-10-00546-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

BNSF RAILWAY COMPANY,

Appellant,

v.

CARLOS DONAWAY,

Appellee.

**On appeal from the 9th District Court
of Montgomery County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez, and Justices Rodriguez and Garza
Memorandum Opinion Per Curiam**

This case is before the Court on the parties' "Joint Motion to Vacate Judgment, Withdraw Opinion, and Dismiss Appeal." Through this motion, the parties invoke Texas Rule of Appellate Procedure 42.1 in requesting that, pursuant to a settlement agreement reached by the parties, we vacate our October 18, 2012 judgment, withdraw our opinion

issued on that same date, vacate the June 11, 2010 judgment of the trial court, and dismiss the appeal. See *generally* TEX. R. APP. P. 42.1.

The Court, having examined and fully considered the joint motion filed by the parties herein, is of the opinion that it should be and is GRANTED. Accordingly, we withdraw our opinion and judgment of October 18, 2012, and substitute this opinion and judgment in their place. See *id.* R. 42.1(c). Further, we vacate the trial court's June 11, 2010 judgment, and DISMISS this appeal. All other pending motions are DISMISSED AS MOOT. In accordance with the agreement of the parties, costs are taxed against the party incurring same. See *id.* R. 42.1(d).

PER CURIAM

Delivered and filed the 7th
day of February, 2013.