



NUMBER 13-17-00083-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN THE INTEREST OF K.M., I.M., AND K.M., CHILDREN

**On appeal from the 92nd District Court
of Hidalgo County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Contreras and Hinojosa
Memorandum Opinion by Justice Contreras**

Appellant, Jesus Mendoza, appeals from an “Order in Suit for Modification of Support Order and to Confirm Support Arrearage” dated January 6, 2017. A partial reporter’s record has been filed in this matter. On June 27, 2017, court reporter Julian G. Alderette filed an affidavit with this Court stating his hard drive containing stenographic notes was dropped and damaged and that he cannot provide a transcript of the hearings because the files cannot be retrieved. Therefore, we abated the cause and remanded to the trial court for a hearing and for findings under Texas Rule of Appellate Procedure

34.6(f), which states that an appellant is entitled to a new trial under the following circumstances:

- (1) if the appellant has timely requested a reporter's record;
- (2) 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;
- (3) 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
- (4) 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).

On remand, the trial court held a hearing during which the terms of the January 6, 2017 order were read into the record. A supplemental clerk's record has been filed containing the trial court's findings as follows:

1. The Court found that Appellant had timely requested a Reporter's record.
2. The Court further found Appellant's Court Reporter's notes and records lost or destroyed had been without Appellant's fault.
3. The court further finds that the destroyed Court Reporter's notes and records are necessary to the appeals resolution.
4. The Court therefore conducted a hearing, and by agreement of the parties to accurately duplicate with reasonable certainty the findings and orders previously rendered in the prior hearing of December, 2016, and order signed January 6, 2017.

We construe the fourth finding to mean that the lost portion of the reporter's record cannot be replaced by agreement by the parties. *See id.*

The record supports the trial court's findings. Accordingly, appellant is entitled to a new trial under rule 34.6(f). See *id.* We therefore reinstate the appeal, reverse the judgment of the trial court and remand for a new trial. All pending motions are denied as moot.

DORI CONTRERAS
Justice

Delivered and filed the
26th day of October, 2017.