



**NUMBER 13-18-00554-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**GARY BRANFMAN,**

**Appellant,**

**v.**

**WARREN V. ALKEK,**

**Appellee.**

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**On appeal from the 24th District Court  
of Victoria County, Texas.**

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**MEMORANDUM OPINION**

**Before Justices Benavides, Perkes, and Tijerina  
Memorandum Opinion by Justice Benavides**

On May 28, 2020, this Court issued a memorandum opinion which affirmed in part, reversed and rendered in part, and reformed the judgment of the trial court. *See Branfman v. Alkek*, No. 13-18-00554-CV, 2020 WL 2776719, at \*1 (Tex. App.—Corpus Christi—Edinburg May 28, 2020, no pet. h.) (mem. op.). This cause is now before the Court on the parties' joint motion for disposition pursuant to settlement. We grant this motion, in part,

and deny it in part, as discussed below.

On June 23, 2020, the parties filed a joint motion to abate the appeal pending settlement. According to their motion to abate, the parties had negotiated a settlement that resolved the issues in this appeal and were in the process of finalizing the settlement agreement. The parties requested that we abate the appeal to allow them time to complete the agreement. On July 7, 2020, this Court granted the joint motion to abate the appeal pending settlement.

On July 22, 2020, the parties filed a joint motion for disposition pursuant to settlement. They asserted that the settlement agreement has been finalized and the parties have agreed to a disposition of this appeal:

Pursuant to the settlement agreement, and in accordance with Texas Rule of Appellate Procedure 42.1(a)(2)(A), the parties request that the Court render judgment effectuating the agreement. Specifically, the parties request that the Court:

- a. Vacate this Court's opinion and judgment dated May 28, 2020;
- b. Reverse the trial court's judgment dated July 5, 2018;
- c. Render judgment dismissing all claims by all parties with prejudice to the refile of same;
- d. Order that each party bear their own costs of the appeal; and
- e. Order that the Victoria County District Clerk release to Appellant Gary Branfman the funds deposited on August 23, 2018 in the amount of \$39,039.05, pursuant to Texas Rule of Appellate Procedure 24.1(c)(3) ("The clerk must hold the deposit until the conditions of liability in (d) are extinguished. The clerk must then release any remaining funds in the deposit to the judgment debtor.").

Given the foregoing, we REINSTATE this appeal. We DISMISS AS MOOT appellee's first amended motion for rehearing or in the alternative, clarification.

We GRANT IN PART and DENY IN PART the joint motion for disposition pursuant to settlement. We GRANT this motion insofar as we withdraw our previous opinion and judgment, see TEX. R. APP. P. 42.1(c), we allow the voluntary dismissal of the appeal, see *id.* R. 42.1(a)(2), and we assess costs against the parties incurring same. See *id.* R. 42.1(d). We DENY the joint motion for disposition as to the specific form of relief sought.

Texas Rule of Appellate Procedure 42.1(a)(2) permits the appellate court to dispose of an appeal by agreement of the parties by: (a) rendering judgment effectuating the agreement; (b) setting aside the trial court's judgment without regard to the merits and remanding the case to the trial court for rendition of judgment in accordance with the agreement; or (c) abating the appeal and permitting proceedings in the trial court to effectuate the agreement. See *id.* R. 42.1(a)(2). Here, the joint motion for disposition requests that we reverse the trial court's judgment, render judgment by dismissing all claims by all parties with prejudice to the refiling of same, and direct the district clerk to release the funds deposited on August 23, 2018. The requested relief does not fit within the parameters of the rule pertaining to voluntary dismissal. See *id.*

Accordingly, we SET ASIDE the trial court's judgment without regard to the merits and REMAND the case to the trial court for rendition of judgment in accordance with the agreement and for the disposition of the funds held by the district clerk. See *id.* R. 42.1(a)(2)(B).

GINA M. BENAVIDES,  
Justice

Delivered and filed the  
30th day of July, 2020.