

No. 08-12-00331-CV

In The
COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
El Paso, Texas

FILED IN
8th COURT OF APPEALS
EL PASO, TEXAS
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DENISE PACHECO
Clerk

LAURA S. WASSMER AND STEPHEN B. HOPPER,
Appellants/Cross-appellees,

v.

JO N. HOPPER,
Appellee/Cross-appellant,

v.

JPMORGAN CHASE BANK, N.A.,
Appellee.

On Appeal from Cause No. PR-3238-3
Probate Court No. 3, Dallas County, Texas
Honorable Michael E. Miller, Presiding Judge

**APPELLEE/CROSS-APPELLANT JO N. HOPPER'S RESPONSE TO
COUNSEL FOR APPELLANTS' MOTION TO WITHDRAW AND FOR
EXTENSION OF TIME TO RESPOND TO MOTION FOR REHEARING**

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TO THE HONORABLE EIGHTH DISTRICT COURT OF APPEALS:

Counsel for Stephen H. Hopper and Laura S. Wassmer (the “Heirs”) has filed, on its own behalf, a Motion for Counsel to Withdraw and for Extension of Time to respond to JPMorgan Chase Bank, N.A.’s (the “IA”) Motion for Rehearing. Appellee/Cross-appellant Jo N. Hopper (“Mrs. Hopper”) responds and objects to this Motion.

I. Factual Background

The Court’s letter of March 4, 2015, requesting a response to the IA’s Motion for Rehearing, appears to have triggered counsel for the Heirs’ perceived “need” to file their Motion for Counsel to Withdraw and for Extension of Time (the “Motion”).

II. There is No Basis Justifying Withdrawal Stated in Motion

Counsel for the Heirs’ Motion completely lacks and fails to provide any legally proper justification for withdrawal. In fact, the Motion merely blithely states that counsel for the Heirs’ representation of the Heirs purportedly “ended” on December 3, 2014,¹ when this Court issued its Opinion. Yet no motion to withdraw was filed until on or about March 9, 2015—over four months later.

¹ We note that the Motion is also unsigned by the Heirs themselves. Nor does the Motion address whether the Heirs consent to or oppose the withdrawal.

There is no explanation given for the (over) four month delay in filing the Motion. Nor is there any other explanation or justification offered for such withdrawal. This absence of justification violates the Texas Rules and should result in denial of the Motion. For example, Texas Rules of Civil Procedure, Rule 10, only allows for withdrawal for good cause shown. It further provides a detailed list of requirements that must be in such a motion, including whether the party approves the substitution (here, there is no substitution sought—only an indefinite time period for the Heirs’ to locate new counsel). No such required information is contained in the Motion before the Court. Further, Texas Rule of Appellate Procedure 10, also addressing motions in the appellate courts, similarly requires that the movant “state with particularity the grounds on which it is based.” Again, there is no such basis stated in the Motion.²

The Court should deny the Motion on these bases alone.

III. The Heirs Do Not Even Need to Be Heard on These Issues

The Court’s Opinion largely dismissed the Heirs’ appeal Issues for want of jurisdiction. And even for the single Issue not dismissed for want of jurisdiction, no Issue or relief was granted in favor of the Heirs; rather, all relief sought by the Heirs was denied. Thus, the Heirs lost on all their Issues, whether on jurisdictional/procedural or substantive grounds. The

² Not to mention that counsel for the Heirs did not bother to conference with Mrs. Hopper’s counsel to discuss or determine whether they would be opposed to the Motion.

Heirs also chose not to file timely a motion for rehearing, and thus those rulings by the Court are binding and final.

Accordingly, there is no practical need for the Heirs to be heard or respond to the IA's Motion for Rehearing. The IA's Motion for Rehearing, by its own admission, does not seek any substantive change to the Court's Opinion. Rather, the IA characterizes its Motion for Rehearing, as one which merely seeks a "clarification" of the Court's Opinion; but not an alteration of the Court's holdings and Judgment.

Particularly too, as to the two non-substantive changes sought, the IA does not address, much less seek to alter, the Court's Opinion related to either the Heirs' jurisdictional deficiencies or any of the Heirs' Issues, generally.

Simply put, the Motion for Rehearing does not impact the Heirs' substantive or procedural positions at all, particularly given that the Heirs lost on all of their Issues. The Opinion, unchallenged by the Heirs, has left them without a (proverbial) dog in the fight. Certainly counsel's Motion should not be allowed to delay these proceedings further by their seeking a last-minute withdrawal.

Mrs. Hopper respectfully suggests that the Court not require any response to the IA's Motion for Rehearing from the Heirs (or their counsel), thus obviating the need for their counsel's Motion in any respect.

IV. Granting the Motion Would Only Serve to Unnecessarily Delay the Proceedings

As set out above, the Motion does not provide the Court any basis, and certainly not a legitimate basis, for counsel's withdrawal. Further, given the Heirs' status as a party to the appeal who (1) had most of their appeal dismissed for want of jurisdiction, and (2) lost on every Issue they presented to the Court, whether on jurisdictional/procedural or substantive grounds, there appears to be no particular need for the Heirs to even respond to the IA's Motion for Rehearing. This is only further emphasized by the IA's Motion for Rehearing not addressing the Heirs' Issues at all.

Consequently, granting counsel for the Heirs' Motion would only serve to delay unnecessarily the appeal. This appeal has been lodged and pending since September of 2012. Oral argument was held in October of 2013. The Opinion was rendered by this Court over four months ago. The Motion for Rehearing has been pending since December of 2014. To allow counsel for the Heirs to further delay the proceedings, particularly given: (1) their complete failure to enunciate any reason, much less good reason, for doing so, and (2) given the practical nature and status of the IA's self-described non-substantive legal challenge remaining, as discussed above, it would not make any practical sense at this juncture (or foster judicial economy) to grant the Motion.

PRAYER

Given the foregoing, the Court should deny the Motion filed on the eve of the deadline to respond to the IA's Motion for Rehearing; or alternatively, if the Court deems appropriate, excuse the Heirs from any requirement to respond to the IA's Motion for Rehearing, thus "mooting" the need for ruling on the Motion altogether. Mrs. Hopper also requests any other relief to which she may be entitled.

Respectfully submitted,

By: /s/ Michael A. Yanof

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