

Juvenile Law Case Summaries

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Court of Appeals threatens attorney with disciplinary sanctions for not citing contrary authority and for pursuing frivolous appeal [In re R.D.W.] (01-4-27).

On September 28, 2001, the Dallas Court of Appeals threatened to impose disciplinary sanctions against the attorney for the juvenile respondent for failure to cite authority contrary to the position he was espousing and for pursuing a frivolous appeal.

01-4-27. In the Matter of R.D.W., UNPUBLISHED, No. 05-00-01416-CV, 2001 WL 1143313, 2001 Tex.App.Lexis ____ (Tex.App.-Dallas 9/28/01) [Texas Juvenile Law (5th Edition 2000)].

Fact: This is an appeal from the trial court's order transferring appellant to the Institutional Division of the Texas Department of Criminal Justice. In five points of error, appellant contends the Texas determinate sentencing law is unconstitutional. Because the issues presented are clearly settled in law, we issue this memorandum opinion pursuant to rule 47.1 of the Texas Rules of Appellant Procedure. See Tex.R.App. P. 47.1. The points raised in appellant's brief challenging the constitutionality of the determinate sentencing statute have been decided adversely to appellant in T.D.H. v. State, 971 S.W.2d 606 (Tex.App.--Dallas 1998, no pet.). For the reasons stated in T.D.H., we overrule appellant's points of error and affirm the trial court's order.

Held: Affirmed.

Opinion Text: Notably, appellant's attorney Larry Doby Rayford was the attorney that represented T.D.H in the prior appeal. Although the points raised in this case are identical to points we disposed of in T.D.H, Rayford did not cite this Court to the three-year-old case, much less attempt to distinguish it or argue for its reversal.

Attorneys owe to the courts duties of scrupulous honesty, forthrightness, and the highest degree of ethical conduct. Texas-Ohio Gas, Inc. v. Mecom, 28 S.W.3d 129, 145 (Tex.App.--Texarkana 2000, no pet.); In re J.B.K., 931 S.W.2d 581, 583 (Tex.App.--El Paso 1996, no writ). Inherent in this high standard of conduct is compliance with both the spirit and express terms of the rules of conduct. Texas-Ohio Gas, Inc., 28 S.W.3d at 145; In re J.B.K., 931 S.W.2d at 583. The Texas Disciplinary Rules of Professional conduct prohibit an attorney from knowingly failing to disclose to the tribunal authority in the controlling jurisdiction known to the attorney to be directly adverse to the position of the client and not disclosed by opposing counsel. See Tex. Disciplinary R. Prof'l Conduct 3.03(a)(4), reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Vernon 1998). This Court has the inherent power to sanction attorneys who engage in misconduct before our Court. See Texas-Ohio Gas, 28 S.W.2d at 145; Johnson v. Johnson, 948 S.W.2d 835, 840 (Tex.App.--San Antonio 1997, writ denied). Furthermore, rule 45 of the Texas Rules of Appellate procedure provides:

If the court of appeals determines that an appeal is frivolous, it may--on motion of any party or on its own initiative, after notice and a reasonable opportunity for response--award each prevailing party just damages. In determining whether to award damages, the court must not consider any matter that does not appear in the record, briefs, or other papers filed in the court of appeals.

Tex.R.App. P. 45; see also In re D.A.S., 973 S.W.2d 296, 298 (Tex.1998) (orig.proceeding) (attorney appointed to represent juvenile may be subject to sanctions under rule 45 for filing a frivolous appeal).

This Court hereby notifies Larry Doby Rayford that we are considering, on our own initiative, sanctioning Rayford under rule 45 and/or under our inherent authority. Rayford is ORDERED to file a response within ten days of the date of this order addressing why sanctions should not be imposed. Specifically, Rayford should address why he failed to direct this Court to T.D.H. See Tex. Disciplinary R. Prof'l Conduct 3.03(a)(4). Rayford should further address whether he had any reasonable ground to believe the order would be reversed or whether the appeal was filed in bad faith. See *Njuku v. Middleton*, 20 S.W.3d 176, 178 (Tex.App.–Dallas 2000, writ denied). In order to determine what sanctions, if any, are appropriate under rule 45, the State of Texas shall file a response within ten days of the date of this order stating what damages it has incurred due to this appeal. See Tex.R.App. P. 45.

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