



Fourth Court of Appeals San Antonio, Texas

May 22, 2020

No. 04-19-00538-CV

William Alec **TISDALL**, M.D. and William A. Tisdall, M.D., P.A. d/b/a Spine &
Joint Pain Specialists,
Appellants

v.

Thomas **VAREBROOK** and Rebecca Varebrook,
Appellees

From the 37th Judicial District Court, Bexar County, Texas
Trial Court No. 2017-CI-06007
Honorable Michael E. Mery, Judge Presiding

ORDER

Sitting: Luz Elena D. Chapa, Justice
Irene Rios, Justice
Beth Watkins, Justice

This is an appeal from a final judgment in a medical malpractice case. The record includes multiple hearings and a lengthy trial, all of which were requested by appellants when the notice of appeal was filed. The individual volumes of testimony and exhibits that comprise the reporter's record have been filed. They include records from two hearings (August 22, 2018 and February 4, 2019) held before the trial date and two hearings (May 5, 2019 and August 1, 2019) held after trial, as well as the trial proceedings, which were held from February 19, 2019 through March 18, 2019. Four different reporters took records of various parts of the proceedings and prepared their respective volumes of the record.

Amy Hinds, as the official court reporter of the court in which the case was tried and the reporter who took the vast majority of the record, is the person responsible for preparing, compiling, formatting and filing the record in accordance with the applicable rules. *See* Tex. R. App. P. 35.3(b); Supreme Court of Texas Order Directing the Form of the Appellate Record, Rule 2, Tex. Supreme Court Misc. Dkt. No. 13-9165 (Dec. 13, 2013) ("Supreme Court Order"); Uniform Format Manual for Texas Reporters' Record, § 10.1, Tex. Supreme Court Misc. Dkt. No.10-9077 (May 25, 2010), *amended* by Misc. Docket No. 10-9113 (June 28, 2010) ("Uniform Format Manual"). In her September 2019 correspondence with appellant's counsel, Hinds

acknowledged she would be responsible for coordinating with the three other reporters to organize the final reporter's record and prepare a master index.

Nevertheless, each of the other reporters filed their own volumes without Hinds coordinating the numbering of the volumes and compilation of the record. This includes seven volumes of the trial proceedings prepared by two other reporters. As a result, the volumes that make up the trial consist of Hinds's volumes 1 through 14 (with subparts), interspersed with two separate volumes labelled "Volume 1 of 1" from reporter Benavides and volumes 1 through 5 of 6 from reporter Garcia (volume 6 of 6 is a record of one of the post-trial hearings).

Hinds filed a "Master Index" as volume 1 of the four-week trial proceedings. The second page of the Master Index is a summary list of the trial volumes prepared and filed by Hinds, and subsequent pages contained copies of the individual indexes of volumes 2 through 13 and a partial index of volume 14, the exhibits. The Master Index did not refer to or include indexes of the pre-trial or post-trial hearings or of the seven days of trial recorded by one of the other reporters. The listing of exhibits did not include any of the exhibits admitted on those seven days.

After Hinds filed her original Master Index, the clerk's office notified Hinds the index was inadequate and referred her to Section 3.23 of the Uniform Format Manual for Texas Reporter's Records.

Hinds has filed an Amended Master Index; however, the deficiencies have not been cured. Hinds changed the summary list to include the seven volumes of trial record prepared by other reporters. Those volumes are inserted in chronological order and referred to by the date of the proceeding and the reporter who filed the record. However, no individual index for those seven days is included. Nor have the exhibits admitted on those dates been added to the master index of the exhibit volume 14 (although it appears all of the exhibits have been filed in volume 14). Information about the pretrial and post-trial hearings is not included in the Master Index.

The "Official Reporter's Record" is "the transcription of so much of the proceedings and any of the exhibits that the parties to the appeal designate." Uniform Format Manual § 1.1(r). Appellants requested transcription of the four hearings and the entire trial proceedings (February 19 through March 18), including exhibits. Hinds was therefore required to compile the record and file one consolidated record of all of the requested proceedings. Supreme Court Order, Rule 2. When a trial occurs over more than one day, each day must be in a new numbered volume and each volume be individually indexed. Uniform Format Manual § 3.23, 6.2(b). "When the Official Reporter's Record consists of more than one volume, in addition to the individual indexes, there must be a master index in a separate volume labeled 'Volume 1,' consisting of a compilation of all of the individual indexes (listing all chronological occurrences, witnesses in the order of their appearance and alphabetically, and the exhibits)." *Id.* § 3.23(d).

Because of the relatively large size of the record and the four-week length of the trial, consecutive numbering of the trial volumes and a complete master index of the proceedings are necessary to enable the court and the parties to locate and cite to items in the record. Hinds's failure to organize and compile the record so that the trial proceeding volumes are numbered sequentially and chronologically and failure to include all of the proceedings in a Master Index will cause an undue burden on the parties and this court.

Accordingly, we **order** Hinds to

1. Renumber and refile the volumes of the trial proceedings (proceedings held 2/19/19–3/18/19) so that the volume numbers are sequential and the volumes are in chronological

order. Hinds may, but is not required to, renumber all of the volumes.¹ Hinds must place the new volume designations on the cover page and on each index page of each volume that is changed. The renumbered volumes must be refiled so that the electronic name of the file reflects the new volume numbers.

To facilitate a speedier resolution, we do not require Hinds to renumber the volumes consisting of the two pre-trial and two post-trial hearings. In the amended Master Index, Hinds may refer to those volumes by their date, subject, the reporter and volume number (e.g., 2/4/19, Hearing on Motion to Strike, Carter vol 1 of 1).

2. The Master Index must include “all of the individual indexes (listing all chronological occurrences, witnesses in the order of their appearance and alphabetically, and the exhibits).” *Id.* This includes the individual indexes from the pre and post-trial hearings, as well as those from each day of the trial. Both the summary page and the individual indexes must reflect the new volume numbers.
3. The Master Index entry for Volume 14, Exhibits, must list all of the trial exhibits offered and admitted at trial, including those offered and admitted on the dates reported by someone other than Hinds. Hinds must also ensure the index for Volume 14 correctly reflects the new volume number in which the exhibit was admitted.

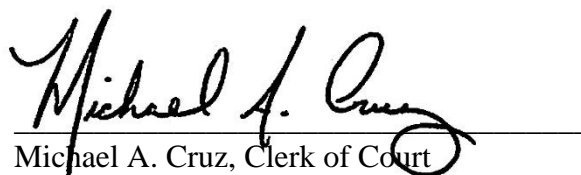
We further **order** Hinds to file the renumbered volumes and an amended Master Index no later than two weeks after the date of this order. We **order** Hinds to work solely on this record until this order has been fully complied with. Hinds must arrange for a deputy or substitute reporter to perform her in court duties and must not undertake to prepare any records for private parties. She must immediately notify this court of all outstanding records she is currently required to prepare for this or any other appellate court.

We recognize this will require Hinds to renumber various volumes of the record prepared by other reporters and to have access to those records. We therefore **order** the clerk of this court and court reporters **Geneva Garcia** and **Delcine Benavides** to allow Hinds access to the data and records she requires to comply with this order.


Luz Elena D. Chapa, Justice

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 22nd day of May, 2020.




Michael A. Cruz, Clerk of Court

¹ For example, the three volumes prepared by other reporters that follow chronologically after Hinds’s Volume 2A could be numbered Volumes 2.1, 2.2, and 2.3 or Volumes 2B, 2C, and 2D.