

No. 04-16-00184-CV

IN THE FOURTH COURT OF APPEALS
SAN ANTONIO, TEXAS

RONALD F. AVERY,
Appellant/Cross-Appellee,

v.

DYLAN BADDOUR and HEARST COMMUNICATIONS, INC.,
Appellees/Cross-Appellants.

Appeal from the 2nd 25th District Court of Guadalupe County, Texas
Cause No. 15-2186-CV

**AGREED MOTION TO ADOPT BRIEFING SCHEDULE
AND FOR LEAVE TO ASSERT CROSS-POINTS IN APPELLEE'S BRIEF**

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*Lead Attorney for Appellees/Cross-
Appellants Dylan Baddour & Hearst
Communications, Inc.*

TO THE HONORABLE COURT OF APPEALS:

Appellees/Cross-Appellants Dylan Baddour and Hearst Communications, Inc. (collectively, "Hearst"), respectfully request that the Court adopt a specific briefing schedule and that Hearst be granted leave to assert its cross-points along with its appellees' arguments in a single brief. Appellant/Cross-Appellee Ronald F. Avery ("Avery") agrees with this request.

1. On March 18, 2016, the trial court signed an Order disposing of all claims and issues in this case.

2. Under the Texas Rules of Appellate Procedure, any party "who seeks to alter the trial court's judgment or other appealable order must file a notice of appeal." Tex. R. App. P. 25.1(c). Avery filed a notice of appeal on March 29, 2016. Hearst filed a notice of cross-appeal on April 11, 2016.

3. This is an accelerated appeal under the Texas Citizens Participation Act. Tex. Civ. Prac. & Rem. Code § 27.008(a). Pursuant to Rule 38.6(a) of the Texas Rules of Appellate Procedure, the deadline for filing an appellant's brief in an accelerated appeal is 20 days "after the later of: (1) the date the clerk's record was filed; or (2) the date the reporter's record was filed." The appellee's brief is due 20 days after the filing of the appellant's brief, and any reply brief is due 20 days after the filing of the appellee's brief. Tex. R. App. P. 38.6(b)-(c).

4. In this case, the reporter's record was filed on April 6, 2016. The clerk's record was filed with this Court on April 12, 2016. Accordingly, the current deadline for Avery's brief as Appellant is May 2, 2016. Hearst's brief as Appellee is due 20 days after the filing of Avery's brief as Appellant, and Avery's reply brief, if any, is due 20 days after the filing of Hearst's brief as Appellee.

5. The Texas Rules of Appellate Procedure do not provide different deadlines for briefs in support of and in opposition to cross-appeals. Accordingly, Hearst's brief as Cross-Appellant is currently due on May 2, 2016, Avery's brief as Cross-Appellee is due 20 days thereafter, and Hearst's reply brief, if any, is due 20 days after Avery's Cross-Appellee brief.

6. This parallel briefing schedule doubles the number of briefs filed by the parties in this case. It will unnecessarily increase the time and resources expended by the parties and the Court and provide no benefit – particularly given that, as Cross-Appellant, Hearst intends to raise only a straightforward issue pertaining to the trial court's failure to award mandatory attorney fees and costs under the Texas Citizens Participation Act, Tex. Civ. Prac. & Rem. Code § 27.009(a), which is inherently intertwined with the merits of Avery's appeal. *See* Hearst's Notice of Cross-Appeal. Justice and efficiency would be best served by allowing Hearst to raise and argue its cross-appellate complaint by way of cross-points in its appellee's brief, thus reducing the total number of briefs to be filed in

this matter and avoiding the filing of redundant briefs. *See generally* John Hill Cayce, Jr., Anne Gardner, and Felicia Harris Kyle, *Civil Appeals in Texas: Practicing under the New Rules of Appellate Procedure*, 49 BAYLOR L. REV. 867, 963-64 (1997) (noting that the Texas Rules of Appellate Procedure appear to require parallel briefing schedules when cross-appeals are filed, and recommending that courts adopt a four-brief schedule for cross-appeals “[t]o relieve the courts of appeals of the potential burden (and confusion) created by parallel briefing, and as a convenience and cost saving measure for the parties”).

7. Accordingly, Hearst asks the Court, with Avery’s agreement, to adopt the following four-brief schedule and word-count limits, subject to the exclusions outlined in Texas Rule of Appellate Procedure 9.4(i)(1) and possible extensions upon further motion by a party:

- a. Avery’s opening brief as Appellant shall be due on May 2, 2016 (15,000-word limit);
- b. Hearst’s combined brief as Appellee and Cross-Appellant shall be due 20 days after Avery’s opening brief is filed (30,000-word limit, 15,000 for the appellee portion and 15,000 for the cross-appellant portion);¹

¹ The word limits for the combined briefs are calculated by combining the relevant word limits set forth in Rule 9.4(i)(2)(B) of the Texas Rules of Appellate Procedure. These word limits are the same as those provided for briefing on cross-

- c. Avery's combined reply brief as Appellant and responsive brief as Cross-Appellee shall be due 20 days after Hearst's combined brief is filed (22,500-word limit, 7,500 for the reply appellant portion and 15,000 for the cross-appellee portion);
- d. Hearst's reply brief as Cross-Appellant shall be due 10 days after Avery's combined reply brief as Appellant and responsive brief as Cross-Appellee is filed (7,500-word limit).

8. This case has not been set for submission. Accordingly, no unnecessary delay will result from the granting of this motion.

CONCLUSION AND PRAYER

For these reasons, Hearst, with Avery's agreement, respectfully requests that the Court grant this motion and issue an order expressly allowing Hearst to raise and argue its cross-appellate complaints in its appellee's brief and adopting the briefing schedule set out in Paragraph 7 above.

appeals in Rule 1(b) of the Local Rules for the Eighth Court of Appeals, which (unlike this Court) has specific rules that speak directly to briefing on cross-appeals.

Respectfully submitted,

/s/ Jonathan R. Donnellan

Jonathan R. Donnellan

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*Lead Attorney for Appellees/Cross-
Appellants Dylan Baddour and
Hearst Communications, Inc.*

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with *pro se* Appellant/Cross-Appellee Ronald F. Avery on April 14, 2016 concerning this Motion, who stated that he agrees to the relief requested by this Motion.

/s/ Jonathan R. Donnellan
Jonathan R. Donnellan

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following parties via Federal Express on April 15, 2016:

Ronald F. Avery
1933 Montclair Dr.
Seguin, TX 78155
taphouse@sbcglobal.net

/s/ Jonathan R. Donnellan
Jonathan R. Donnellan

HEARST corporation

Jennifer D Bishop
Counsel

April 15, 2016

VIA FEDERAL EXPRESS

Ronald F. Avery
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**Re: Ronald Avery v. Dylan Baddour & Hearst Communications, Inc.,
Court of Appeals Number 04-16-00184-CV; Guadalupe County
Cause No. 15-2186-CV**

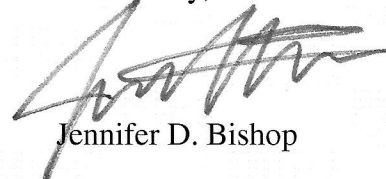
Dear Mr. Avery:

Enclosed for service under Texas Rule of Civil Procedure 21a(a) and Texas Rule of Appellate Procedure 9.5(b), please find a copy of the following documents from Defendants Hearst Communications, Inc. and Dylan Baddour in the above-referenced matter, which were filed with the clerk today:

- Agreed Motion to Adopt Briefing Schedule and for Leave to Assert Cross-Points in Appellee's Brief

Thank you for your attention to this matter. Please call me at (212) 649-2030, if you have any questions regarding the above.

Yours truly,



Jennifer D. Bishop

Enclosure

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