

COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

JOHN HESS,	§	No. 08-10-00217-CV
	§	
Appellant,	§	Appeal from
	§	
v.	§	37th District Court
	§	
DONNA JOHNSON,	§	of Bexar County, Texas
	§	
Appellee.	§	(TC # 2006-CI-06893)
	§	

MEMORANDUM OPINION

Pending before the Court is Appellee Donna Johnson's motion to dismiss for want of prosecution. We grant the motion and dismiss the appeal.

The trial court dismissed the underlying case for want of prosecution on December 8, 2009. On January 11, 2010, Hess filed a motion for new trial which included notice of appeal. The trial court subsequently overruled Hess's motion for new trial. On July 1, 2010, the Fourth Court of Appeals requested that Hess pay the appellate filing fee in the amount of \$175.00 and advised him that the appeal could be dismissed if he failed to do so. On that same date, Johnson filed her motion to dismiss for want of prosecution in the Fourth Court of Appeals on the grounds that Hess had not paid the filing fee and he had not taken the steps required to ensure that the clerk's record or reporter's record would be filed.¹ See TEX.R.APP.P. 34.6(b), 37.3(b), and 37.3(c). Hess did not pay the filing fee or file any response to the motion to dismiss. On July 22, 2010, this Court sent a

¹ This case was transferred from the Fourth Court of Appeals to the Eighth Court of Appeals pursuant to a docket equalization order issued by the Supreme Court of Texas. See TEX.GOV'T CODE ANN. § 73.001 (Vernon 2005).

second request for the filing fee and warned Hess that failure to pay the filing fee could result in dismissal of the appeal. Hess did not pay the filing fee or otherwise communicate with the Court about the appeal. Further, Hess has done nothing to prosecute the appeal since filing his motion for new trial and notice of appeal. Accordingly, we dismiss the appeal pursuant to Texas Rules of Appellate Procedure 5, 42.3(b), and 42.3(c).

September 29, 2010

ANN CRAWFORD McCLURE, Justice

Before Chew, C.J., McClure, and Rivera, JJ.