

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-22-00447-CV

John and Sally Kosmatka, Appellants

v.

Motostalgia, LLC; Antonio Brunet; and Motoreum, LLC, Appellees

**FROM THE 53RD DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-GN-19-008679, THE HONORABLE MARIA CANTÚ HEXSEL, JUDGE PRESIDING**

MEMORANDUM OPINION

The clerk's record in this appeal was due for filing in this Court on September 6, 2022. On September 9, 2022, we notified appellants that no clerk's record had been filed due to their failure to pay or make arrangements to pay the trial clerk's fee for preparing the clerk's record. The notice requested that appellants make arrangements for the clerk's record and submit a status report regarding this appeal by September 19, 2022. Further, the notice advised appellants that their failure to comply with this request could result in the dismissal of the appeal for want of prosecution. To date, appellants have not filed a status report or otherwise responded to this Court's notice, and the clerk's record has not been filed.

If a trial-court clerk fails to file the clerk's record due to an appellants' failure to pay or make arrangements to pay for the clerk's fee for preparing the record, the appellate court may dismiss the appeal for want of prosecution unless the appellant was entitled to proceed

without payment of costs. Tex. R. App. P. 37.3(b). In this case, appellants have not established that they are entitled to proceed without payment of costs. *See* Tex. R. Civ. P. 145. Because appellants have failed to pay or make arrangements to pay the clerk's fee for preparing the clerk's record, this appeal is dismissed for want of prosecution.

Darlene Byrne, Chief Justice

Before Chief Justice Byrne, Justices Triana and Smith

Dismissed for Want of Prosecution

Filed: October 12, 2022