



NUMBER 13-10-00074-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

LEOPOLDO LEAL,

Appellant,

v.

ESTATE OF FRANK VARGAS,

Appellee.

**On appeal from the 105th District Court
of Nueces County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Yañez and Garza
Memorandum Opinion Per Curiam**

The appellant's brief in the above cause was due on March 19, 2010. On June 2, 2010, the Clerk of the Court notified appellant that the brief had not been timely filed and that the appeal was subject to dismissal for want of prosecution under Texas Rule of Appellate Procedure 38.8(a)(1), unless within ten days from the date of receipt of this letter, appellant reasonably explained the failure and the appellee was not significantly

injured by the appellant's failure to timely file a brief. Appellant responded on June 7, 2010. Appellant contends that he "finds himself in a situation where the clerk from the district clerk[]s office who referred the appeal to this honorable court, Mr. Arnold Garcia suddenly passed away and that left me in an uncertainty as to whether this honorable court would even consider docketing this appeal." Appellant's letter also explains that there is no evidence to substantiate the appellee's claims and that the Court should render a judgment favorable to him.

Appellant's response refers to the death of Arnold Garcia, Deputy District Clerk for Nueces County who died on May 2, 2010, however appellant's notice of appeal was filed on February 4, 2010 and the clerk's record was filed on February 17, 2010. Appellant has failed to either reasonably explain his failure to file a brief, file a motion for extension of time to file his brief, or file his brief. Accordingly, the appeal is DISMISSED FOR WANT OF PROSECUTION. See TEX. R. APP. P. 38.8(a), 42.3(b).

PER CURIAM

Delivered and filed the
15th day of July, 2010.