

**NO. 12-08-00396-CV**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

***JOYCE BOTELHO AND  
ANTHONY BOTELHO,  
APPELLANTS***

**§ *APPEAL FROM THE***

***V.***

**§ *COUNTY COURT AT LAW NO. 3 OF***

***CINDY LARKIN AND  
BUILDER'S CARPET &  
DESIGN CENTER, INC.,  
APPELLEES***

**§ *SMITH COUNTY, TEXAS***

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***MEMORANDUM OPINION  
PER CURIAM***

This appeal is being dismissed for failure to comply with the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 42.3. Pursuant to Rule 32.1, Appellants' docketing statement was due to have been filed at the time the appeal was perfected, i.e., September 26, 2008. *See* TEX. R. APP. P. 32.1. On September 30, 2008, this court notified Appellants that they should file a docketing statement immediately if they had not already done so. On the same date, by separate letter, this court notified Appellants that the filing fee was due on or before October 10, 2008.

Because Appellants did not file the docketing statement as requested in our letter, this court issued a second notice on October 15, 2008 advising Appellants that the docketing statement was past due. The notice also advised Appellants that the filing fee in the appeal was due to have been paid on or before October 10, 2008, but had not been received. *See* TEX. R. APP. P. 5. The notice further provided that unless the docketing statement and filing fee were filed on or before October 27, 2008, the appeal would be presented for dismissal in accordance with Texas Rule of Appellate Procedure 42.3. The date for filing the docketing statement and the filing fee has passed,

and Appellants have not complied with the court's request. Because Appellants have failed, after notice, to comply with Rules 5 and 32.1, the appeal is *dismissed*. See TEX. R. APP. P. 42.3(c).

Opinion delivered October 31, 2008.

*Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.*

(PUBLISH)