

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CHIP ELLIS and ELLIS)	
MOTORCARS, INC.,)	
)	
Appellants,)	
)	
v.)	CASE NO. 2:17-CV-254-WKW
)	[WO]
JENNIFER ELAINE PRIDE,)	
)	
Appellee.)	

ORDER

Before the court is Appellee Jennifer Elaine Pride’s Motion to Dismiss Appeal. (Doc. # 4.) Federal Rule of Bankruptcy Procedure 8018(a)(1) sets a thirty-day deadline for an appellant to “serve and file a brief” after the transmittal of the record has been docketed. Should the appellant fail to meet this deadline, subsection (a)(4) authorizes the district court to dismiss the appeal, whether *sua sponte* or on the appellee’s motion.

Rule 8018 does not grant absolute discretion to dismiss appeals for failure to prosecute. Indeed, the Eleventh Circuit has cautioned against “routine dismissal[s] for failure to timely file briefs.” *Brake v. Tavormina (In re Beverly Mfg. Corp.)*, 778 F.2d 666, 667 (11th Cir. 1985). Instead, “dismissal is proper only when bad faith, negligence or indifference has been shown.” *Id.*

Because Appellant’s ongoing silence in this matter demonstrates negligence and indifference, dismissal of this appeal is proper. *See Pyramid Mobile Homes, Inc. v. Speake*, 531 F.2d 743, 745–46 (5th Cir. 1976) (affirming district court’s dismissal of appeal where “for over four months after filing its appeal appellant had made no effort to comply with the Rules”). Since the transmittal of appeal from the bankruptcy court was docketed on April 25, 2017, Appellant has not filed any papers with the court. The court’s August 1, 2017 Order to respond to Appellee’s motion to dismiss similarly went unanswered. (*See* Doc. # 5.) This is the sort of “complete failure to take any steps other than the mere filing of a notice of appeal” that justifies dismissal under Rule 8018(a)(4). *In re Beverly Mfg. Corp.*, 778 F.2d at 667.

Accordingly, it is ORDERED that Appellee Jennifer Elaine Pride’s Motion to Dismiss Appeal (Doc. # 4) is GRANTED. It is further ORDERED that this appeal is DISMISSED with prejudice.

A final judgment will be entered separately.

DONE this 30th day of August, 2017.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE