

DISMISSED and Opinion Filed March 25, 2013.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-12-00894-CV

**BEECHWOOD SERVICING, LLC, Appellant
V.
MIKE OWEN AND BRANDOLYN OWEN, Appellees**

**On Appeal from the County Court at Law No. 5
Dallas County, Texas
Trial Court Cause No. CC-10-03452-E**

MEMORANDUM OPINION

**Before Justices Moseley, O'Neill, and Lewis
Opinion by Justice O'Neill**

Before the Court is appellees' March 5, 2013 motion to dismiss the appeal for want of prosecution and request for damages for filing a frivolous appeal. In response, appellant filed a notice of dismissal stating that the appeal had been effectively dismissed on January 6, 2013 because appellant did not file a brief by that date. Appeals are not *effectively* dismissed in this Court. If appellant intended not to pursue its appeal, it should have filed a motion to dismiss. Nevertheless, appellant informs the Court that after its counsel reviewed the extensive record, it determined that the appeal was not meritorious and made the decision not to file a brief. It contends the appeal was not frivolous as it followed proper procedures for bringing an appeal and paid for an extensive record. Only after reviewing the record, was the decision made not to file a brief.

We grant appellees' motion and dismiss the appeal. *See* TEX. R. APP. P. 42.3(b). We deny appellees' request for damages.

/Michael J. O'Neill/
MICHAEL J. O'NEILL
JUSTICE

120894F.P05



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

BEECHWOOD SERVICING, LLC,
Appellant

No. 05-12-00894-CV V.

MIKE OWEN AND BRANDOLYN
OWEN, Appellees

On Appeal from the County Court at Law
No. 5, Dallas County, Texas
Trial Court Cause No. CC-10-03452-E.
Opinion delivered by Justice O'Neill.
Justices Moseley and Lewis participating.

In accordance with this Court's opinion of this date, the appeal is **DISMISSED**.

It is **ORDERED** that appellees, MIKE OWEN AND BRANDOLYN OWEN, recover their costs of this appeal from appellant, BEECHWOOD SERVICING, LLC.

Judgment entered this 25th day of March, 2013.

/Michael J. O'Neill/

MICHAEL J. O'NEILL
JUSTICE