

**Dismiss and Opinion Filed August 30, 2018**



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

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**No. 05-17-01219-CV**

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**DIANE E. CLEMENTS, Appellant**

**V.**

**CVS PHARMACY, INC., CVS CAREMARK CORP., CVS HEALTH, CAREMARK,  
LLC, AND DM DESIGNS, INC., Appellees**

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**On Appeal from the 380th Judicial District Court  
Collin County, Texas  
Trial Court Cause No. 380-04930-2015**

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**MEMORANDUM OPINION**

**Before Justices Bridges, Brown, and Boatright  
Opinion by Justice Bridges**

This is an appeal from a summary judgment dismissing appellant's premises liability suit. Before the Court is appellees' opposed motion to dismiss the appeal pursuant to Texas Rule of Appellate Procedure 38.8(a)(1) and 42.3. Appellees assert appellant has failed to file her brief despite being granted numerous extensions and being cautioned that failure to file the brief could result in dismissal of the appeal.

We note appellant's brief was first due December 17, 2017. On February 15, 2018, after two extensions for filing the brief had been granted, counsel for appellant informed the Court appellant had died. Counsel sought another extension and explained that while appellant's husband was expected to be appointed administrator of appellant's estate, appellant's husband was

not yet authorized to act on her behalf.<sup>1</sup> Based on counsel's representations, we extended the deadline for filing the brief another thirty days and then another sixty days. The order granting the sixty-day extension directed appellant's brief or a status report on the probate proceedings be filed no later than May 28, 2018. When neither was filed, we ordered the brief or status report be filed no later than July 13, 2018 and cautioned that failure to comply could result in dismissal of the appeal.

The Court has had no communication with appellant's counsel or anyone on behalf of appellant's estate since March 19, 2018. As no brief or status report has been filed, we grant appellees' motion and dismiss the appeal. *See* TEX. R. APP. P. 38.8(a)(1), 42.3(b),(c).

/David L. Bridges/  
DAVID L. BRIDGES  
JUSTICE

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<sup>1</sup> A claim involving a party's property rights survives the death of the party. *See Kenseth v. Dallas Cty.*, 126 S.W.3d 584, 593-94 (Tex. App.—2004, pet. denied). Under Texas Rule of Appellate Procedure 7.1, if a party to a civil case dies after the trial court renders judgment but before the case has been fully disposed of on appeal, the appeal may be perfected, and the appeal will proceed as if all parties were alive. *See* TEX. R. APP. P. 7.1(a). The deceased party may be represented by the executor or administrator of his estate or by an heir. *See Kenseth*, 126 S.W.3d at 595-96.



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

**JUDGMENT**

DIANE E. CLEMENTS, Appellant

No. 05-17-01219-CV      V.

CVS PHARMACY, INC., CVS  
CAREMARK CORP., CVS HEALTH,  
CAREMARK, LLC, AND DM DESIGNS,  
INC., Appellees

On Appeal from the 380th Judicial District  
Court, Collin County, Texas

Trial Court Cause No. 380-04930-2015.

Opinion delivered by Justice Bridges,  
Justices Brown and Boatright participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal.

We **ORDER** appellees CVS Pharmacy, Inc., CVS Caremark Corp., CVS Health, Caremark, LLC, and DM Designs, Inc. recover their costs of this appeal from appellant Diane E. Clements.

Judgment entered August 30, 2018.