

Opinion issued February 6, 2018



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-16-00760-CV

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**CECIL ADAMS AND MAXINE ADAMS, Appellants**  
V.  
**HARRIS COUNTY, TEXAS, Appellee**

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**On Appeal from the 157th District Court**  
**Harris County, Texas**  
**Trial Court Case No. 2014-35653**

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**MEMORANDUM OPINION**

Appellants, Cecil Adams and Maxine Adams, have neither paid nor made arrangements to pay the fee for preparing the clerk's record, have not established indigence for purposes of appellate costs, and have failed to timely file a proper clerk's record. *See* TEX. R. APP. P. 20.1 (regarding indigence in civil appeals);

35.1(a) (governing time to file clerk's record in civil cases); 35.3(a)(2) (providing that appellant, as party responsible for paying for preparation of clerk's record, must pay clerk's fee or establish entitlement to proceed without paying fee before trial court clerk must prepare record).

After being notified that this appeal was subject to dismissal, appellants have not made arrangements to file the required record. *See* TEX. R. APP. P. 37.3(b) (authorizing dismissal for appellant's failure to file clerk's record); 42.3(b)–(c) (allowing involuntary dismissal of case). Instead, after the time for responding to this Court's notice to file the clerk's record had passed, they filed an "Emergency Motion to Stay Appeal Pending Ruling on Request to Have Record Sent Up Pursuant to [Texas Rules of Appellate Procedure 2, 34.5(c)(1), 34.5(c)(3), and 37.1]." The appellants ask that we suspend the usual operation of the rules pursuant to Rule 2, order the clerk's record, and tax the cost of the record as appellate costs against the losing party, referencing Rule 34.5(c)(1), (3) and Rule 37.1. Rule 34.5(c) addresses the Court's ability to supplement the clerk's record filed by the parties, and neither Rule 34.5(c) nor Rule 37.1 impose any duty on this Court to procure the record on appellants' behalf. *See* TEX. R. APP. P. 34.5(c); *see also* TEX.

R. APP. P. 37.1 (setting out duties of appellate clerk upon receiving notice of appeal).<sup>1</sup>

We dismiss the appeal for want of prosecution and for nonpayment of all required fees. We dismiss any pending motions as moot.

**PER CURIAM**

Panel consists of Justices Keyes, Brown, and Lloyd.

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<sup>1</sup> Appellants also state in their motion that, if the Court denies their motion to stay, they will “request an indigence hearing to determine if [they] should be granted [a] record at no cost.” However, even if such a motion were to be properly filed, this Court would not be required to grant a hearing in light of appellants’ failure to file a proper request in a timely manner. *See* TEX. R. APP. P. 20.1(b)(3) (“An appellate court *may* permit a party who is not entitled to proceed under [subpart] (1) to proceed without payment of costs if the party establishes that the party’s financial circumstances have materially changed since the date of the trial court’s order under Texas Rule of Civil Procedure 145.”) (emphasis added). Furthermore, any such relief would ultimately be ineffectual due to the fact that the order identified in appellants’ notice of appeal purports to be an interlocutory summary judgment order. *See generally* *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001) (providing that court generally only has jurisdiction over final judgments that dispose of all claims and all parties).