

Court of Appeals
Fourth Court of Appeals District of Texas
San Antonio



MEMORANDUM OPINION

No. 04-12-00056-CV

IN THE INTEREST OF S.A.N. and D.O.A.N., Children

From the 166th Judicial District Court, Bexar County, Texas

Trial Court No. 2010EM501438

Honorable Jim Rausch, Judge Presiding

PER CURIAM

Sitting: Catherine Stone, Chief Justice
Karen Angelini, Justice
Marialyn Barnard, Justice

Delivered and Filed: July 18, 2012

DISMISSED FOR WANT OF PROSECUTION

Appellant D.D.N. a/k/a D.D.M. appeals the trial court's judgment signed January 31, 2012. Appellant timely filed a notice of appeal and an "Affidavit of Inability to Pay Costs." In response to the affidavit, the court reporter timely filed a contest. *See* TEX. R. APP. P. 20.1(e). After a hearing, at which appellant failed to appear, the trial court sustained the contest. Thereafter, the court reporter filed a notice of late record with this court stating the court reporter's record was not filed because appellant failed to pay or make arrangements to pay the fee to prepare the record and that appellant is not entitled to the record without paying the fee. *See id.* R. 34.6(b), 35.3(b).

Accordingly, we ordered appellant to provide written proof to this court on or before March 23, 2012, that the reporter's fee had been paid or arrangements satisfactory to the reporter had been made to pay the fee. *See id.* R. 35.3(b). We advised appellant that if she failed to respond within the time provided, her brief would be due on or before April 2, 2012, and the court would consider only those issues or points raised in the brief that did not require a reporter's record for a decision. *See id.* R. 37.3(c). Appellant did not respond to our order, and therefore, her brief, without benefit of the reporter's record, was due on or before April 2, 2012. Appellant did not file her brief; rather, on April 9, 2012, appellant filed a motion to extend time to file her brief, which was granted on April 10, 2012. Pursuant to the order granting appellant an extension of time, appellant's brief was due in this court on or before May 9, 2012. However, neither the brief nor a motion for extension of time was filed.

Therefore, on May 31, 2012, we ordered appellant to file, on or before July 2, 2012, her appellant's brief and a written response reasonably explaining her failure to timely file the brief. We advised appellant that if she failed to file the brief and the written response by the date ordered, we would dismiss the appeal for want of prosecution. *See id.* R. 38.8(a). Appellant has not filed a brief or the written response ordered by the court.

We therefore **order** this appeal dismissed for want of prosecution. We further **order** that appellee D.N. recover his costs in this appeal, if any, from appellant.

PER CURIAM