

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-18-00115-CV

CHARLES KIRKWOOD, Appellant

V.

JEFFERSON COUNTY, TEXAS AND W. PROPERTIES, LLC, Appellees

On Appeal from the 172nd District Court
Jefferson County, Texas
Trial Cause No. E-194,967

MEMORANDUM OPINION

Jefferson County filed a motion to dismiss the accelerated appeal of Charles Kirkwood from the trial court's March 15, 2018 order granting Jefferson County's plea to the jurisdiction.¹ The letter brief filed by Charles Kirkwood, Appellant, failed

¹ This is the third time this case has been before this Court. In the two previous appeals, we reversed the trial court's dismissal order and remanded the case for further proceedings. *See Kirkwood v. Jefferson Cty.*, No. 09-16-00337-CV, 2017 WL 4319771, at *3 (Tex. App.—Beaumont Sept. 28, 2017, no pet.) (mem. op.); *Kirkwood v. Jefferson Cty.*, No. 09-15-00296-CV, 2016 WL 536852, at *2 (Tex. App.—Beaumont Feb. 11, 2016, no pet.) (mem. op.).

to present any issue for appellate review and presented no authority supporting a reversal of the trial court's judgment. The brief of Jefferson County, Appellee, argued that Kirkwood waived all complaints for the appeal. By letter dated September 11, 2018, we notified the parties that Kirkwood's brief failed to comply with Texas Rule of Appellate Procedure 38.1(a) through (k), directed Kirkwood to file an amended brief, and cautioned that his failure to file an amended brief that complied with Rule 38.1 by October 11, 2018, would result in dismissal of the appeal without further notice. On October 19, 2018, Kirkwood filed another letter brief that lacked a list of all parties and counsel, a table of contents, an index of authorities, a statement of the case, a list of the issues presented, a statement of facts with references to the record, or an argument with appropriate citations to the record. *See* Tex. R. App. P. 38.1. On October 22, 2018, Jefferson County filed a motion to dismiss the appeal based on Kirkwood's failure to comply with this Court's notice by filing a brief that complies with Rule 38.1. *See id.*; *see also* Tex. R. App. P. 42.3(c).

If the court determines that the briefing rules have been flagrantly violated, it may require a brief to be amended, and if another brief that does not comply with Rule 38.1 is filed, the court may strike the brief, prohibit the party from filing another, and proceed as if the party had failed to file a brief. Tex. R. App. P. 38.9(a);

see also Tex. R. App. P. 38.1. Because Kirkwood failed to file an amended brief that complies with Rule 38.1 after we provided an opportunity to correct the brief, we grant Jefferson County's motion to dismiss, strike the appellant's non-conforming brief, and dismiss this appeal for want of prosecution. *See* Tex. R. App. P. 38.8(a)(1), 38.9(a), 42.3(b), (c), 43.2(f).

APPEAL DISMISSED.

CHARLES KREGER
Justice

Submitted on August 28, 2018
Opinion Delivered November 8, 2018

Before Kreger, Horton, and Johnson, JJ.