



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00407-CV

JOSE AGUILAR

APPELLANT AND APPELLEE

V.

LELAND PENNINGTON, INC.,
D/B/A PENNINGTON CONCRETE

APPELLEE AND APPELLANT

FROM THE 141ST DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 141-281046-15

MEMORANDUM OPINION¹ AND JUDGMENT

Appellant Jose Aguilar filed a notice of appeal seeking to challenge several orders that the trial court signed on September 29, 2016, including the Final Judgment that granted summary judgment for Appellee Leland Pennington, Inc., d/b/a Pennington Concrete. On April 10, 2017, we notified Aguilar that his appellant's brief had not been filed as required by rule of appellate procedure

¹See Tex. R. App. P. 47.4.

38.6(a). See Tex. R. App. P. 38.6(a). We stated that we could dismiss the appeal for want of prosecution unless he or any party desiring to continue the appeal filed with the court within ten days a motion reasonably explaining the failure to file a brief and the need for an extension. See Tex. R. App. P. 10.5(b), 38.8(a)(1), 42.3. We did not receive any response.

Pennington Concrete also filed a notice of appeal, but it characterizes its cross-appeal as “conditional,” asking us to consider its issue challenging several of the trial court’s adverse rulings on its objections to Aguilar’s summary-judgment evidence only “[t]o the extent that Aguilar may contend that this improperly admitted evidence raises a fact issue” in his appeal.² But Aguilar did not file a brief and rely upon the summary-judgment evidence that Pennington Concrete argues should have been excluded, so its conditional cross-issue is moot. See *Johnson v. Riggs*, Nos. 07-12-00095-CV, 07-12-00139-CV, 07-12-00509-CV, 2013 WL 1189089, at *2 (Tex. App.—Amarillo Mar. 22, 2013, no pet.) (mem. op.) (holding cross-issue moot because appellant’s appeal dismissed).

Because Aguilar’s brief has not been filed, and because Pennington Concrete’s conditional cross-issue is moot, we dismiss this appeal. See Tex. R. App. P. 38.8(a), 42.3(b), 43.2(f); *Johnson*, 2013 WL 1189089, at *5 (dismissing

²In other words, Pennington Concrete would not want us to sustain Aguilar’s issue challenging the trial court’s grant of summary judgment without additionally considering its cross-issue.

appeal after granting appellant's motion to dismiss and holding cross-issue moot).

/s/ Bill Meier
BILL MEIER
JUSTICE

PANEL: MEIER, KERR, and PITTMAN, JJ.

DELIVERED: September 21, 2017