

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-05-00074-CV

Beverly Randolph Mahone, Appellant

v.

Employees Retirement System of Texas, Appellee

**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 200TH JUDICIAL DISTRICT
NO. GN302308, HONORABLE LORA J. LIVINGSTON, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellee Employees Retirement System of Texas moves to dismiss the appeal for want of prosecution. Appellant's brief was due May 16, 2005; an overdue notice was sent May 23, 2005, warning that the appeal would be dismissed for want of prosecution. *See* Tex. R. App. P. 38.8(a)(1). Appellant did not tender a brief or a motion for extension of time to file a brief. *See id.* Appellant's counsel sent a "suggestion of death" to this Court.

In a civil case, "[i]f a party to [the case] dies after the trial court renders judgment but before the case has been finally disposed of on appeal . . . the appellate court will proceed to adjudicate the appeal as if all parties were alive." Tex. R. App. P. 7.1(a)(1); *see Kenseth v. Dallas Cty.*, 126 S.W.3d 584, 593-94 (Tex. App.—Dallas 2004, pet. denied). Although the certificate of conference reflects opposition to the motion to dismiss, no response giving reasons for continuing

the appeal has been tendered to this Court in the approximately twenty days since the motion to dismiss was filed. Accordingly, we dismiss the appeal for want of prosecution. *See* Tex. R. App. P. 42.3(a).

W. Kenneth Law, Chief Justice

Before Chief Justice Law, Justices Pemberton and Waldrop

Dismissed for Want of Prosecution

Filed: September 30, 2005