

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-05-00119-CV

Appellant, Mark S. Brown//Cross-Appellant, Kyle T. Keeling

v.

Appellee, Kyle T. Keeling//Cross-Appellee, Mark S. Brown

**FROM THE COUNTY COURT AT LAW OF TOM GREEN COUNTY
NO. 04C155-1, HONORABLE BEN NOLEN, JUDGE PRESIDING**

MEMORANDUM OPINION

The clerk's record in this case was due March 15, 2005. The County Clerk of Tom Green County notified this Court that the record had not been paid for, nor had payment arrangements been made. *See* Tex. R. App. P. 35.3(a)(2). On March 23, appellant Mark S. Brown was notified that he had to make payment arrangements for the record or his appeal would be dismissed for want of prosecution. *See* Tex. R. App. P. 37.3(b), 42.3(b). To date, appellant has not

complied with our instructions and the clerk's record is long overdue. Accordingly, we dismiss the appeal for want of prosecution. *See* Tex. R. App. P. 37.3(b), 42.3(b).¹

W. Kenneth Law, Chief Justice

Before Chief Justice Law, Justices Pemberton and Waldrop

Dismissed for Want of Prosecution

Filed: October 21, 2005

¹ Appellee Kyle T. Keeling filed a motion to dismiss the appeal based on appellant Brown's notice of appeal being tendered late. Brown's motion for extension of time to file notice of appeal was granted and Keeling's motion to dismiss overruled. At the same time, Keeling filed a notice of cross-appeal "to permit complete relief to appellee in the matter of the appeal" in the event Brown's appeal was allowed to continue. The notice of cross-appeal stated that the notice would be withdrawn upon dismissal of Brown's appeal. Although we are dismissing based on want of prosecution rather than on Keeling's motion, the effect is that Brown's appeal will not continue. Accordingly, we consider Keeling's notice of cross-appeal withdrawn. Of course, should this appeal be reinstated for any reason, so would Keeling's cross-appeal.