

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00719-CV

John Zuniga, Appellant

v.

Conni Flora, Appellee

**FROM COUNTY COURT AT LAW NO. 1 OF TRAVIS COUNTY
NO. C-1-CV-16-008306, HONORABLE TODD T. WONG, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant John Zuniga filed his notice of appeal on October 24, 2016. We notified him that he was required to make a written request and arrangements to pay for the clerk's record and the reporter's record within ten days from his receipt of our letter. The clerk's record from the trial court was due to be filed in this Court on December 16, 2016.

On January 3, 2017, this Court notified appellant that no clerk's record had been filed due to his failure to pay or make arrangements to pay the fee for preparing the clerk's record. The Court's notice requested that appellant make arrangements for the clerk's record and submit a status report regarding this appeal by January 13. In addition, the notice informed appellant that his appeal was subject to dismissal if he did not comply with our instructions. To date, appellant has not filed a status report or otherwise responded to this Court's notice, and the clerk's record has not been filed.

If the trial court's clerk fails to file the clerk's record due to appellant's failure to pay or make arrangements to pay for the clerk's fee for preparing the record, the appellate court may dismiss the appeal for want of prosecution unless the appellant was entitled to proceed without payment of costs. Tex. R. App. P. 37.3(b). In this case, appellant has not established that he is entitled to proceed without payment of costs. See Tex. R. App. P. 20.1 (providing procedure for establishing inability to pay court costs on appeal); see also Tex. R. Civ. P. 145 (establishing procedure in trial court for overruling party's claim of indigence). Although appellant filed a statement of inability to afford costs with his notice of appeal in the trial court, a contest to that statement was filed. After a hearing on November 3, 2016, the trial court sustained the contest to appellant's inability to afford costs and declared his statement "of no further force or effect." Appellant did not appeal from that order. See Tex. R. Civ. P. 145(g)(1)-(2) (establishing that motion challenging trial court's order sustaining contest must be filed in court of appeals within ten days after order is signed). We therefore dismiss the appeal for want of prosecution. See Tex. R. App. P. 42.3(b).

Cindy Olson Bourland, Justice

Before Chief Justice Rose, Justices Field and Bourland

Dismissed for Want of Prosecution

Filed: March 10, 2017