

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-18-00647-CV

Mark D. McGillvray and J. D. Robertson, Trustee, Appellants

v.

**Bank of America, N.A., as Mortgage Servicer; Bank Of America, N.A., as Mortgagee;
McCarthy Holthus Texas, LLP, Appellees**

**FROM THE 459TH DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-GN-18-005961, THE HONORABLE AMY CLARK MEACHUM, JUDGE PRESIDING**

MEMORANDUM OPINION

The clerk's record in this appeal was due for filing in this Court on December 3, 2018. On March 21, 2019, we notified appellant that no clerk's record had been filed due to his failure to pay or make arrangements to pay the trial clerk's fee for preparing the clerk's record. The notice requested that appellant make arrangements for the clerk's record and submit a status report regarding this appeal by April 1, 2019. Further, the notice advised appellant that his failure to comply with this request could result in the dismissal of the appeal for want of prosecution. 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 a trial-court clerk fails to file the clerk's record due to an appellant's failure to pay or arrange 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. Civ. P. 145. Because appellant has failed to pay or make arrangements to pay the clerk's fee for preparing the clerk's record, this appeal is dismissed for want of prosecution.

Thomas J. Baker, Justice

Before Justices Goodwin, Baker, and Triana

Dismissed for Want of Prosecution

Filed: May 24, 2019