

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-19-00122-CV**

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**Nationstar Mortgage, LLC d/b/a Mr. Cooper, Appellant**

**v.**

**Kimberly Leff and Ben Leff, Appellees**

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**FROM THE 419TH DISTRICT COURT OF TRAVIS COUNTY  
NO. D-1-GN-18-003076, THE HONORABLE JAMES LEE CARROLL, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

The clerk's record in this appeal was due for filing in this Court on March 25, 2019. On March 26, 2019, we notified appellant that no clerk's record had been filed due to its 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 5, 2019. Further, the notice advised appellant that its failure to comply with this request could result in the dismissal of the appeal for want of prosecution. Appellant filed a status report informing the Court that its notice of appeal had been prematurely filed and that it intended to file a new notice of appeal when the trial court entered a final judgment. Appellant subsequently filed a new appeal, which was docketed as No. 03-19-00299-CV, *Nationstar Mortgage, LLC d/b/a Mr. Cooper v. Kimberly Leff and Ben Leff*. As a result, no clerk's record was ever filed in this appeal, No. 03-19-00122-CV.

If a trial-court clerk fails to file the clerk's record due to an 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 it 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.

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Chari L. Kelly, Justice

Before Justices Goodwin, Baker, and Kelly

Dismissed for Want of Prosecution

Filed: October 18, 2019