



NUMBER 13-19-00144-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

DIANE R. MENDEZ, ET AL.,

Appellants,

v.

PABLO GARCIA,

Appellee.

On appeal from the County Court at Law No. 3
of Bexar County, Texas.

MEMORANDUM OPINION

Before Chief Justice Contreras and Justices Benavides and Longoria
Memorandum Opinion by Justice Longoria

Appellants Diane R. Mendez and Angelica Mendez filed a pro se notice of appeal from a writ of possession issued in an eviction case. Their appeal was transferred to this Court from the Fourth Court of Appeals by order of the Texas Supreme Court. See TEX. GOV'T CODE ANN. § 22.220(a) (delineating the jurisdiction of appellate courts); *id.* § 73.001

(granting the supreme court the authority to transfer cases from one court of appeals to another at any time that there is “good cause” for the transfer).

The appellants’ brief in this case was due on June 17, 2019. On June 20, 2019, the Clerk of the Court notified appellants that their brief had not been timely filed and that the appeal was subject to dismissal for want of prosecution under Texas Rule of Appellate Procedure 38.8(a)(1), unless within ten days from the date of receipt of the courts letter, appellants reasonably explained the failure and the appellee was not significantly injured by the appellants’ failure to timely file a brief. See TEX. R. APP. P. 38.8(a)(1). Appellants have not responded to the Court’s directive and have not filed a brief in this matter.

The Texas Rules of Appellate Procedure authorize the appellate courts to dismiss appeals for want of prosecution in civil cases when the appellant fails to file its brief within the prescribed time. See *generally id.* R. 38.8(a); *Jimenez v. Soria*, 224 S.W.3d 722, 722 (Tex. App.—El Paso 2006, no pet.); *State v. Palacios*, 968 S.W.2d 467, 468 (Tex. App.—Fort Worth 1998, no pet.); *Elizondo v. City of San Antonio*, 975 S.W.2d 61, 63 (Tex. App.—San Antonio 1998, no pet.). Rule 38.8 of the rules of appellate procedure governs the failure to file an appellant’s brief in civil cases and provides as follows:

- (a) Civil Cases. If an appellant fails to timely file a brief, the appellate court may:
 - (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure and the appellee is not significantly injured by the appellant’s failure to timely file a brief;
 - (2) decline to dismiss the appeal and give further direction to the case as it considers proper; or

- (3) if an appellee's brief is filed, the court may regard that brief as correctly presenting the case and may affirm the trial court's judgment upon that brief without examining the record.

TEX. R. APP. P. 38.8(a)(1); *see also Brown v. Bryant*, 181 S.W.3d 901, 902 (Tex. App.—Dallas 2006, pet. denied) (per curiam) (dismissing an appeal for the failure to file the appellant's brief).

The Court, having examined and fully considered the documents on file, is of the opinion that the appeal should be dismissed for want of prosecution. *See* TEX. R. APP. P. 38.8(a)(1); *id.* R. 42.3(b); *Jimenez*, 224 S.W.3d at 722. Appellants have failed to either reasonably explain the failure to file a brief, file a motion for extension of time to file the brief, or file the brief. *See* TEX. R. APP. P. 38.8(a)(1); *id.* R. 10.5(b)(1)(C) (requiring extension motions to include the facts relied on to reasonably explain the need for an extension of time); *Simon v. Dillard's, Inc.*, 86 S.W.3d 798, 800–01 (Tex. App.—Houston [1st Dist.] 2002, order) (per curiam) (same). Accordingly, we dismiss the appeal for want of prosecution. *See* TEX. R. APP. P. 38.8(a), 42.3(b).

NORA L. LONGORIA
Justice

Delivered and filed the
18th day of July, 2019.