



NUMBER 13-20-00093-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

STEPHEN CARRIGAN,

Appellant,

v.

**WILLIAM R. EDWARDS, THE EDWARDS
LAW FIRM AND JO EMMA ARECHIGA,**

Appellees.

**On appeal from the 319th District Court
of Nueces County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Longoria and Perkes
Memorandum Opinion by Chief Justice Contreras**

This is an appeal of a judgment confirming an arbitration award. The cause is before the court on several motions filed by both parties. We will dismiss the appeal for want of prosecution. See TEX. R. APP. P. 38.8(a)(1).

The underlying arbitration award assessed sanctions against appellant Stephen

Carrigan and Keith Gould,¹ jointly and severally, and was signed by the arbitrator on September 20, 2019. Appellees William R. Edwards and The Edwards Law Firm moved the trial court to confirm the arbitration award on September 27, 2019. In response to the motion to confirm, appellant and Gould filed a “trial brief” October 23, 2019, arguing only that the final judgment should not include any costs of court beyond that included in the arbitrator’s award. The record does not show that appellant ever moved to vacate or modify the arbitrator’s award. The trial court confirmed the award and rendered judgment against appellant and Gould on November 13, 2019. This appeal followed.

The filing of the appellate record was completed on March 12, 2020, and appellant’s brief was therefore due on April 13, 2020. See TEX. R. APP. P. 38.6(a). On April 8, 2020, appellant filed a motion to extend the time to file his brief, citing the Texas Supreme Court’s emergency order relating to the COVID-19 pandemic, and we granted an extension until June 1, 2020. On May 27, 2020, appellant filed a second motion to extend time to file the brief, again citing pandemic-related concerns.² We again granted the motion and extended the deadline to file the brief to July 1, 2020. Appellant did not file a brief by that date. Instead, on July 1, 2020, appellant filed a “Notice of Reliance of [sic] Eighteenth Emergency Order Regarding the COVID-19 State of Disaster” which quoted the following portion of the Texas Supreme Court’s then-applicable emergency order:

1. Governor Abbott has declared a state of disaster in all 254 counties in the State of Texas in response to the imminent threat of the COVID-19 pandemic. This Order is issued pursuant to Section 22.0035(b) of the Texas Government Code.

¹ Gould is not a party to this appeal.

² The second motion for extension was entitled “Appellate’s [sic] Last Motion for Continuance [sic].”

. . . .

3. Subject only to constitutional limitations, all courts in Texas may in any case, civil or criminal—and must to avoid risk to court staff, parties, attorneys, jurors, and the public—without a participant’s consent:

a. except as provided in paragraph (b) [regarding proceedings under Subtitle E, Title 5 of the family code], modify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than September 30, 2020

Eighteenth Emergency Order Regarding the COVID-19 Disaster, Misc. Docket No. 20-9080 (Tex. Jun. 29, 2020). Appellant did not request any relief from this Court in his July 1, 2020 “Notice.”

Appellees filed a motion to dismiss the appeal for want of prosecution on July 2, 2020. It later filed its appellee’s brief on July 28, 2020.

This Court received a brief from appellant on October 1, 2020. The Clerk of this Court notified appellant the brief was late and did not comply with the appellate rules. See TEX. R. APP. P. 38.1(b), (d), (g), (h), (i), (k). On October 5, 2020, we received an amended brief from appellant, which also failed to comply with the appellate rules, as well as a motion for leave to file the amended brief. This Court received a second amended brief from appellant on October 13, 2020, which again failed to comply with the appellate rules. See TEX. R. APP. P. 9.4(h), (j)(1), 38.1(b), (g), (h), (i). Appellees moved to strike appellant’s second amended brief. Appellant filed a response to the motion to strike which was combined with a “Motion to Modify TRAP Rules Pursuant to Texas Supreme Court’s Twenty-Sixth Emergency Orders [sic] Regarding COVID-19 State of Disaster.” In this filing, appellant sought an additional extension of the deadline to file his brief until October 30, 2020, but offered no explanation for the deficiencies in the brief.

Having fully reviewed appellees’ motion to dismiss, we find it is meritorious and

should be granted. The Texas Supreme Court's Eighteenth Emergency Order permitted courts to extend filing deadlines until September 30, 2020, and it required courts to do so "to avoid risk to court staff, parties, attorneys, jurors, and the public" resulting from the pandemic. *Eighteenth Emergency Order Regarding the COVID-19 Disaster*, Misc. Docket No. 20-9080. Appellant did not argue or establish that an extension of the deadline to file his brief would be necessary or appropriate to avoid such risk. In any event, the Texas Supreme Court's Emergency Orders are not self-executing; they permit courts to extend deadlines, and they require extensions in certain instances, but they do not extend deadlines themselves.

We may dismiss an appeal for want of prosecution where an appellant fails to timely file a brief "unless the appellant reasonably explains the failure and the appellee is not significantly injured by the appellant's failure to timely file a brief." TEX. R. APP. P. 38.8(a)(1). We conclude that appellant has not reasonably explained his failure to file a brief on or before the twice-extended deadline of July 1, 2020. Of course, we acknowledge the disruption and extraordinary circumstances generated by the pandemic, and we sympathize with all those who have been affected. But the pandemic conditions do not generate a blanket excuse which can be used to extend deadlines indefinitely, especially in the absence of any specific explanation for why such extensions are warranted.

For the foregoing reasons, appellees' motion to dismiss is GRANTED and the appeal is DISMISSED FOR WANT OF PROSECUTION. See *id.* All other pending motions are dismissed as moot.

DORI CONTRERAS
Chief Justice

Delivered and filed the
5th day of November, 2020.