

NO. 12-09-00459-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

THELMA BARKER,
APPELLANT

§ APPEAL FROM THE 294TH

V.

§ JUDICIAL DISTRICT COURT OF

THOMAS GAYON WHATLEY,
APPELLEE

§ VAN ZANDT COUNTY, TEXAS

MEMORANDUM OPINION
PER CURIAM

This appeal is being dismissed for want of prosecution. *See* TEX. R. APP. P. 42.3(b). Appellant, Thelma Barker, perfected her appeal on November 30, 2009. The clerk's record was filed on January 29, 2010, making Barker's brief due on or before March 1, 2010. When Barker failed to file her brief by March 1, 2010, this court notified Barker on March 5, 2010 that the brief was past due. The notice warned that if no motion for extension of time to file the brief was received by March 15, 2010, the appeal would be dismissed for want of prosecution under Texas Rule of Appellate Procedure 42.3(b). Further, the notice informed Barker that the motion for extension of time must contain a reasonable explanation for her failure to file the brief and a showing that Appellee, Thomas Gayon Whatley, had not suffered material injury thereby.

Barker subsequently filed two motions for extensions of time to file her brief. Both motions were granted, and her brief was ultimately due on May 12, 2010. When Barker failed to file her brief by that date, this court notified Barker on May 13, 2010 that the brief was past due. The notice warned that if no motion for extension of time to file the brief was received by May 24, 2010, the appeal would be dismissed for want of prosecution under rule 42.3(b). Further, the notice informed Barker that the motion for extension of time must contain a reasonable explanation for her failure to file the brief and a showing that Whatley had not suffered material injury thereby.

To date, Barker has neither complied with nor otherwise responded to this court's May 13, 2010 notice. Accordingly, we *dismiss* the appeal *for want of prosecution*. *See* TEX. R. APP. P. 38.8(a)(1), 42.3(b).

Opinion delivered May 28, 2010.

Panel consisted of Worthen, C.J., Griffith, J.,

(PUBLISH)