

**NO. 12-18-00047-CV**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

<i>PETER RUNNING, JAMIE RUNNING, AND CINDY WILKINS, APPELLANTS/CROSS-APPELLEES</i>	§	<i>APPEAL FROM THE 392ND</i>
<i>V.</i>		
<i>THE CITY OF ATHENS, TEXAS AND ATHENS MUNICIPAL WATER AUTHORITY, APPELLEES/CROSS-APPELLANTS</i>	§	<i>JUDICIAL DISTRICT COURT</i>
	§	<i>HENDERSON COUNTY, TEXAS</i>

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***MEMORANDUM OPINION  
PER CURIAM***

This appeal is being dismissed for want of prosecution. *See* TEX. R. APP. P. 42.3(b). Appellants, Peter Running, Jamie Running, and Cindy Wilkins, perfected their appeal on March 1, 2018. The clerk's and reporter's records were filed on March 12 and Appellants' brief was due on or before April 2. On April 4, this Court granted Appellants' request for an extension of time, making their brief due by April 23. On April 24, this Court notified Appellants that their brief was past due and that the appeal may be dismissed for want of prosecution unless a motion for extension of time, containing a reasonable explanation for the failure to file a brief and showing that Appellees have not suffered material injury thereby, is filed no later than May 4. On April 27, the parties filed a joint motion for extension of time. We granted the motion and gave Appellants until May 9 to file a brief.

Appellants' late brief was received by this Court on May 10. That same day, this Court requested a motion for leave to file a late brief by May 15. The notice further informed Appellants that the brief failed to comply with Texas Rule of Appellate Procedure 38.1(k) and requested a supplement to the brief on or before May 15. *See* TEX. R. APP. P. 38.1(k) (appendix in civil cases). We notified Appellants that failure to do so would result in the brief being

returned and deemed past due, and the case being presented to the Court for dismissal for failure to timely file a brief.

The May 15 deadline has passed and Appellants did not file a motion for leave to file their late brief or an appendix as required by Rule 38.1(k). Accordingly, we *dismiss* the appeal as to Peter Running, Jamie Running, and Cindy Wilkins for *want of prosecution*. See TEX. R. APP. P. 38.8(a)(1), 42.3(b). This dismissal does not affect the cross-appeal filed by Appellees/Cross-Appellants.

Opinion delivered May 23, 2018.

*Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.*

(PUBLISH)



## COURT OF APPEALS

### TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

#### JUDGMENT

MAY 23, 2018

NO. 12-18-00047-CV

**PETER RUNNING, JAMIE RUNNING, AND CINDY WILKINS,**

Appellants/Cross-Appellees

V.

**THE CITY OF ATHENS, TEXAS AND ATHENS MUNICIPAL WATER AUTHORITY,**

Appellees/Cross-Appellants

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Appeal from the 392nd District Court  
of Henderson County, Texas (Tr.Ct.No. CV16-0028-392)

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THIS CAUSE came to be heard on the appellate record; and the same being considered, it is the opinion of this Court that this appeal should be dismissed for want of prosecution.

It is therefore ORDERED, ADJUDGED and DECREED by this Court that the appeal be, and the same is, hereby **dismissed for want of prosecution** as to Peter Running, Jamie Running, and Cindy Wilkins; and that this decision be certified to the court below for observance. This dismissal does not affect the cross-appeal filed by Appellees/Cross-Appellants.

By *per curiam* opinion.

Panel consisted of Worthen, C.J., Hoyle, J. and Neeley, J.