

COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS AT DALLAS

Michael D. Rodgers Sr. v. Bank of America, N.A.

Rodgers v. Bank of America · No. 05-13-00357-CV · Decided September 24, 2013

SUMMARY

The Fifth District Court of Appeals of Texas granted Bank of America, N.A.’s motion to dismiss the appeal as moot and for failure to prosecute. The court dismissed the appeal because the appellant had not responded to the motion or filed the required brief, and awarded appellate costs to the appellee.

CASE DETAILS

|                       |                                                                                                                                                        |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals for the Fifth District of Texas at Dallas                                                                                             |
| WRITING FOR THE COURT | Per Curiam; David L. Bridges; Fillmore; Lewis                                                                                                          |
| JURISDICTION          | Texas                                                                                                                                                  |
| DECIDED               | September 24, 2013                                                                                                                                     |
| DOCKET                | 05-13-00357-CV                                                                                                                                         |
| DISPOSITION           | dismissed                                                                                                                                              |
| PROCEDURAL POSTURE    | Appellant appealed from the County Court at Law No. 2 of Dallas County. The appellee moved to dismiss the appeal as moot and for failure to prosecute. |
| PRECEDENTIAL VALUE    | Unpublished memorandum opinion; no reporter citation appears in the provided text.                                                                     |
| PARTIES               | Michael D. Rodgers Sr. v. Bank of America, N.A.                                                                                                        |

TOPICS

- appellate procedure
- mootness
- civil procedure
- costs

PRACTICE AREAS

- Appellate procedure
- Civil procedure

QUESTIONS PRESENTED

- Whether the appeal should be dismissed for failure to prosecute after the appellant failed to file the required brief and failed to respond to the appellee's dismissal motion.
- Whether the appeal should be dismissed as moot.

## HOLDINGS

1. The appeal was dismissed because the appellant failed to prosecute the appeal, including failing to file the required brief and failing to respond to the appellee's motion to dismiss; the court also granted the motion insofar as it sought dismissal as moot.

## KEY QUOTATIONS

*“The Court accordingly GRANTS the motion and DISMISSES this appeal.”*

## FACTUAL BACKGROUND

The record presented in the opinion concerns an appeal in which the appellant failed to file the required appellate brief by the due date. The appellant also failed to respond to the appellee's motion to dismiss the appeal as moot and for failure to prosecute.

## PROCEDURAL HISTORY

The appeal was taken from the County Court at Law No. 2, Dallas County, Texas. The appellee filed a motion to dismiss on September 9, 2013, asserting mootness and failure to prosecute. The appellant did not respond and failed to file the appellant's brief, which was due May 1, 2013. The court granted the motion and dismissed the appeal, taxing appellate costs against the appellant.

## DISPOSITION

dismissed

## OPINION

### PER CURIAM.

Dismiss and Opinion Filed September 24, 2013 S In The Court of Appeals Fifth District of Texas at Dallas No. 05-13-00357-CV MICHAEL D. RODGERS SR., Appellant V. BANK OF AMERICA, N.A., Appellee On Appeal from the County Court at Law No. 2 Dallas County, Texas Trial Court Cause No. CC-13-00429-B MEMORANDUM OPINION Before Justices Bridges, Fillmore, and Lewis Opinion Per Curiam The Court has before it appellee's September 9, 2013 motion to dismiss appeal as moot and for failure to prosecute.

Appellant has not responded to the motion nor filed his brief, which was due on May 1, 2013. The Court accordingly GRANTS the motion and DISMISSES this appeal. See TEX. R. APP. P. 42.3. 130357F.P08 PER CURIAM S Court of Appeals Fifth District of Texas at Dallas JUDGMENT MICHAEL D. RODGERS SR., Appellant On Appeal from the County Court at Law No. 2, Dallas County, Texas No. 05-13-00357-CV V. Trial Court Cause No. CC-13-00429-B.

Opinion delivered Per Curiam. Justices BANK OF AMERICA, N.A., Appellee Bridges, Fillmore and Lewis sitting for the Court. In accordance with this Court's opinion of this date, this appeal is

DISMISSED. It is ORDERED that appellee BANK OF AMERICA, N.A. recover its costs of this appeal from appellant MICHAEL D. RODGERS SR. Judgment entered September 24, 2013 /David L. Bridges/ DAVID L. BRIDGES JUSTICE 130357.docx –2–

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