

COURT OF APPEALS FOR THE SIXTH APPELLATE DISTRICT OF TEXAS AT
TEXARKANA

In the Interest of S.B., a Child

In re S.B. · No. 06-20-00102-CV · Decided September 28, 2021

SUMMARY

The Sixth Court of Appeals of Texas at Texarkana dismissed Mekhala Bhimesh’s appeal for want of prosecution after she failed to file an appellate brief by the final deadline. The court relied on Texas Rules of Appellate Procedure 38.8(a)(1) and 42.3(b), (c).

CASE DETAILS

COURT	Court of Appeals for the Sixth Appellate District of Texas at Texarkana
WRITING FOR THE COURT	Scott E. Stevens; Chief Justice Morriss; Justice Burgess; Justice Stevens
JURISDICTION	Texas
DECIDED	September 28, 2021
DOCKET	06-20-00102-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellant failed to file an appellate brief by the court-ordered final deadline and appealed from the 469th Judicial District Court of Collin County, Texas.
PRECEDENTIAL VALUE	Published memorandum opinion
PARTIES	Mekhala Bhimesh

TOPICS

- appellate procedure
- civil procedure
- family law procedure

PRACTICE AREAS

- appellate procedure
- family law

QUESTIONS PRESENTED

1. Whether the appeal should be dismissed for want of prosecution under the Texas Rules of Appellate Procedure because the appellant failed to file a brief by the court-ordered deadline.

HOLDINGS

1. An appeal may be dismissed for want of prosecution when the appellant fails to file a brief by the court-ordered deadline after receiving notice that the failure may result in dismissal.

KEY QUOTATIONS

“Having received no brief from appellant, Bhimesh’s appeal is ripe for dismissal for want of prosecution.” (2)

“Consequently, Pursuant to Rules 38.8 and 42.3 of the Texas Rules of Appellate Procedure, we dismiss this appeal for want of prosecution.” (2)

FACTUAL BACKGROUND

Mekhala Bhimesh filed a timely notice of appeal and received several extensions to file her appellate brief. Despite a final deadline and an express warning that failure to file a brief would subject the appeal to dismissal, she did not file a brief.

PROCEDURAL HISTORY

Bhimesh timely filed a notice of appeal from the trial court. After multiple extensions of the briefing deadline, including an extension granted after the Texas Supreme Court denied her motion to retransfer the case, the court set September 21, 2021, as the final deadline and warned that failure to file a brief could result in dismissal. Bhimesh failed to file a brief, and the court denied her fourth extension motion before dismissing the appeal for want of prosecution.

DISPOSITION

dismissed

OPINION

in the Interest of S.B., a Child

PER CURIAM.

In The Court of Appeals Sixth Appellate District of Texas at Texarkana No. 06-20-00102-CV

IN THE INTEREST OF S.B., A CHILD

On Appeal from the 469th Judicial District Court Collin County, Texas Trial Court No. 469-55532-2016 Before Morriss, C.J., Burgess and Stevens, JJ. Memorandum Opinion by Justice Stevens

MEMORANDUM OPINION

Mekhala Bhimesh filed a timely notice of appeal on December 4, 2020.¹ The clerk’s record was filed on February 23, 2021, and the reporter’s record was filed on June 7, 2021. The original deadline for Bhimesh’s appellate brief was July 7, 2021. On Bhimesh’s motion, that deadline was extended to August 6, 2021. The deadline for Bhimesh to file her brief was again extended on her motion to August 27, 2021. At that time, the Court advised Bhimesh that further extension requests would not be granted. Nevertheless, Bhimesh filed a third motion for extension of time in which to

file her brief. That deadline passed while Bhimesh's motion to retransfer this case to the Fifth Court of Appeals in Dallas was pending, which, effectively, gave Bhimesh additional time to prepare her brief. After the Texas Supreme Court denied Bhimesh's motion seeking a retransfer of this case to the Fifth Court of Appeals, this Court granted Bhimesh's third motion for extension of time in which to file her brief for a period of seven days, making her brief due on or before September 21, 2021. This Court advised Bhimesh that September 21, 2021, was the final briefing deadline and that failure to file a brief on or before this deadline would subject her appeal to dismissal for want of prosecution. See TEX. R. APP. P. 38.8(a)(1), 42.3(b), (c). Bhimesh failed to meet this deadline and did not file a brief with this Court. Instead, Bhimesh filed a fourth motion for extension of time in which to file her brief. That motion was denied, leaving in place the September 21, 2021, deadline. 1 Originally appealed to the Fifth Court of Appeals, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. See TEX. GOV'T CODE ANN. § 73.001. 2 Bhimesh has not filed her brief in compliance with this Court's deadline. Having received no brief from appellant, Bhimesh's appeal is ripe for dismissal for want of prosecution. Consequently, Pursuant to Rules 38.8 and 42.3 of the Texas Rules of Appellate Procedure, we dismiss this appeal for want of prosecution. See TEX. R. APP. P. 38.8(a)(1), 42.3(b), (c). Scott E. Stevens Justice Date Submitted: September 27, 2021 Date Decided: September 28, 2021 3