

COURT OF APPEALS OF THE THIRTEENTH DISTRICT OF TEXAS

Trey W. Fricks v. Robert Shaw and Richard Shaw

Fricks v. Shaw · No. 13-20-00312-CV · Decided December 30, 2020

SUMMARY

The Thirteenth Court of Appeals of Texas dismissed Trey W. Fricks’s pro se appeal from a final summary judgment awarding title to land in favor of Robert Shaw and Richard Shaw. The court dismissed the appeal for want of prosecution and for failure to correct defects in the notice of appeal or comply with the court’s directives.

CASE DETAILS

COURT	Court of Appeals of the Thirteenth District of Texas
WRITING FOR THE COURT	Nora L. Longoria; Justice Benavides; Justice Longoria; Justice Tijerina
JURISDICTION	Texas
DECIDED	December 30, 2020
DOCKET	13-20-00312-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Fricks appealed a final summary judgment awarding title to land to Robert Shaw and Richard Shaw. The court of appeals dismissed the appeal after Fricks failed to cure defects in his notice of appeal or respond to the court's directives.
STANDARD OF REVIEW	The court applied the Texas Rules of Appellate Procedure governing dismissal for failure to comply with appellate rules, court orders, or clerk notices. It also recognized that those rules should be construed reasonably and liberally so that the right to appeal is not lost through requirements unnecessary to effectuate a rule's purpose.
PRECEDENTIAL VALUE	Published memorandum opinion; the source metadata identifies the opinion as published.
PARTIES	Trey W. Fricks v. Robert Shaw, Richard Shaw

TOPICS

- appellate procedure
- civil procedure
- title disputes
- summary judgment

PRACTICE AREAS

Appellate procedure

Civil procedure

Real property

QUESTIONS PRESENTED

1. Whether the court of appeals could dismiss the appeal when the appellant failed to cure defects in his notice of appeal after receiving court notices, directives, and an opportunity to respond.
2. Whether the appeal should be dismissed for want of prosecution and failure to comply with the Texas Rules of Appellate Procedure and the court's directives.

HOLDINGS

1. The court may dismiss an appeal when the appellant fails to comply with a requirement of the appellate rules, a court order, or a clerk notice requiring a response or other action within a specified time.
2. Liberal construction of the Texas Rules of Appellate Procedure does not require preservation of an appeal when the appellant fails to comply with repeated court directives and specified deadlines.

KEY QUOTATIONS

“We are to construe the Texas Rules of Appellate Procedure reasonably, yet liberally, so that the right to appeal is not lost by imposing requirements not absolutely necessary to effectuate the purpose of a rule.” (at 2)

“Accordingly, we dismiss this appeal for want of prosecution and because the appellant failed to comply with the requirements of the appellate rules and directives from the Clerk.” (at 3)

FACTUAL BACKGROUND

The underlying dispute concerned ownership of a tract of land in Bayside, Texas. The Shaws sued Fricks for trespass to try title, declaratory relief, and temporary and permanent injunctive relief. The trial court awarded title to the Shaws in a final summary judgment. Fricks filed a defective notice of appeal and failed to correct it after repeated notices and deadlines from the court of appeals.

PROCEDURAL HISTORY

The Shaws sued Fricks in the 135th District Court of Refugio County for trespass to try title, declaratory relief, and temporary and permanent injunctive relief concerning ownership of land in Bayside, Texas. The trial court rendered final summary judgment awarding title to the Shaws. On July 30, 2020, the court of appeals notified Fricks that his notice of appeal was defective and directed him to file an amended notice within thirty days. After Fricks failed to comply, the court issued a September 2, 2020 notice giving him ten additional days to cure the defect and warning that the appeal would be dismissed. Fricks again failed to respond or correct the notice, and the court dismissed the appeal for want of prosecution and failure to comply with appellate rules and court directives.

DISPOSITION

dismissed

CASES CITED

- Republic Underwriters Ins. Co. v. Mex-Tex, Inc., 150 S.W.3d 423, 427 (Tex. 2004)
- Verburgt v. Dorner, 959 S.W.2d 615, 616-617 (Tex. 1997)
- Jardon v. Pfister, 593 S.W.3d 810, 820 (Tex. App.—El Paso 2019, no pet.)
- Smith v. DC Civil Constr., LLC, 521 S.W.3d 75, 76 (Tex. App.—San Antonio 2017, no pet.)

OPINION

PER CURIAM.

NUMBER 13-20-00312-CV COURT OF APPEALS THIRTEENTH DISTRICT OF TEXAS CORPUS CHRISTI – EDINBURG TREY W. FRICKS, Appellant, v. ROBERT SHAW AND RICHARD SHAW, Appellees. On appeal from the 135th District Court of Refugio County, Texas. MEMORANDUM OPINION Before Justices Benavides, Longoria, and Tijerina Memorandum Opinion by Justice Longoria Appellant Trey W. Fricks filed a pro se notice of appeal regarding a final summary judgment rendered against him and in favor of appellees Robert Shaw and Richard Shaw.

In the underlying trial court proceedings, appellees had filed suit against Fricks for trespass to try title, declaratory relief, and temporary and permanent injunctive relief regarding the ownership of a tract of land in Bayside, Texas.

The trial court granted final summary judgment awarding title of the land to appellees, and this appeal ensued. We dismiss the appeal. On July 30, 2020, this Court advised appellant that his notice of appeal did not comply with the appellate rules. See TEX. R. APP. P. 37.1 (requiring the appellate court clerk to notify the party of defects in a notice of appeal); *id.* R. 9.5(e) (delineating the requirements for a certificate of service on appellate filings).

The Court directed appellant to file an amended notice of appeal within thirty days. Appellant did not comply. On September 2, 2020, the Court notified appellant that he had not complied with the Court's directive and instructed him to correct the defective notice of appeal within ten days. See *id.* R. 42.3 (b),(c).

The Court advised appellant that the appeal would be dismissed if the defect was not cured within ten days. Appellant did not correct the defective notice of appeal or otherwise respond to the Court's directive. We are to construe the Texas Rules of Appellate Procedure reasonably, yet liberally, so that the right to appeal is not lost by imposing requirements not absolutely necessary to effectuate the purpose of a rule.

Republic Underwriters Ins. Co. v. Mex-Tex, Inc., 150 S.W.3d 423, 427 (Tex. 2004); Verburgt v. Dorner, 959 S.W.2d 615, 616–617 (Tex. 1997); Jardon v. Pfister, 593 S.W.3d 810, 820 (Tex. App.—El Paso 2019, no pet.). Nevertheless, the Court has the authority to dismiss an appeal for want of prosecution or because the appellant has failed to comply with a requirement of the appellate rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

See TEX. R. APP. P. 42.3(b),(c); Smith v. DC Civil Constr., LLC, 521 S.W.3d 75, 76 (Tex. App.—San Antonio 2017, no pet.). 2 The Court, having examined and fully considered the documents on file and the applicable law, is of the opinion that this appeal should be dismissed.

Accordingly, we dismiss this appeal for want of prosecution and because the appellant failed to comply with the requirements of the appellate rules and directives from the Clerk. See TEX. R. APP. P. 42.3(b),(c). NORA L. LONGORIA Justice Delivered and filed the 30th day of December, 2020. 3