

**COURT OF APPEALS FOR THE SECOND APPELLATE DISTRICT OF TEXAS
AT FORT WORTH**

Thomas Flucker v. Skylanding Apartments

Flucker · No. 02-22-00041-CV · Decided June 23, 2022

SUMMARY

The Texas Second Court of Appeals dismissed Thomas Flucker’s appeal in an eviction case. The court granted Skylanding Apartments’ motion to dismiss for want of prosecution because Flucker failed to file a docketing statement, request a reporter’s record, timely file his brief, and respond to court notices and the dismissal motion.

CASE DETAILS

COURT	Court of Appeals for the Second Appellate District of Texas at Fort Worth
WRITING FOR THE COURT	Elizabeth Kerr; Birdwell; Bassel
JURISDICTION	Texas
DECIDED	June 23, 2022
DOCKET	02-22-00041-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from a county court at law judgment awarding Skylanding Apartments possession of residential property, unpaid rent, and trial and appellate attorney's fees. The appellee moved to dismiss the appeal for want of prosecution and failure to comply with appellate-court notices.
PRECEDENTIAL VALUE	Published memorandum opinion
PARTIES	Thomas Flucker v. Skylanding Apartments

TOPICS

appellate procedure eviction landlord tenant civil procedure

PRACTICE AREAS

Appellate procedure Eviction Landlord-tenant law Civil procedure

QUESTIONS PRESENTED

1. Whether the appeal should be dismissed for want of prosecution because the appellant failed to comply with appellate deadlines and requirements.
2. Whether the appeal should be dismissed because the appellant failed to respond to appellate-court notices requiring a response or other action within a specified time.

HOLDINGS

1. An appeal may be dismissed for want of prosecution when the appellant fails to comply with appellate deadlines and requirements, including failing to file a required docketing statement and timely brief.
2. An appeal may be dismissed when the appellant fails to respond to appellate-court notices requiring a response or other action within a specified time.

KEY QUOTATIONS

“Because Flucker has failed to prosecute his appeal and because he has failed to respond to our notices requiring a response or other action within a specified time, we grant Skylanding’s motion and dismiss the appeal.” (2)

FACTUAL BACKGROUND

Skylanding Apartments obtained a trial-court judgment awarding it possession of residential property, unpaid rent, and trial and appellate attorney's fees. After filing a notice of appeal, Thomas Flucker repeatedly failed to comply with appellate requirements, including filing a docketing statement, requesting or designating a reporter's record, and filing his brief. He also failed to respond to court notices and to Skylanding's motion to dismiss.

PROCEDURAL HISTORY

The County Court at Law No. 1 of Tarrant County entered judgment for Skylanding Apartments in an eviction case. After Flucker filed a notice of appeal, he failed to file a required docketing statement, request or designate a reporter's record, timely file his brief, or respond to appellate notices and the appellee's dismissal motion. The court of appeals granted the motion and dismissed the appeal.

DISPOSITION

dismissed

OPINION

PER CURIAM.

In the Court of Appeals Second Appellate District of Texas at Fort Worth

No. 02-22-00041-CV _____

THOMAS FLUCKER, Appellant V. SKYLANDING APARTMENTS, Appellee On Appeal from

County Court at Law No. 1 Tarrant County, Texas Trial Court No. 2021-006343-1 Before Kerr, Birdwell, and Bassel, JJ. Memorandum Opinion by Justice Kerr MEMORANDUM OPINION In this eviction case, Thomas Flucker has appealed from the trial court's judgment awarding possession of residential property, unpaid rent, and trial and appellate attorney's fees to appellee Skylanding Apartments.

Skylanding has moved to dismiss this appeal for want of prosecution and for Flucker's failure to respond to our notices requiring a response or other action within a specified time. See Tex. R. App. P. 42.3(b), (c). Specifically, Skylanding points out that Flucker (1) failed to file a docketing statement despite our February 15, 2022 late- docketing-statement notice directing him to file one within 10 days,¹ see Tex. R. App.

P. 32.1, (2) failed to request a reporter's record, 2 and (3) failed to timely file his brief by the May 23, 2022 deadline set out in our April 22, 2022 letter to the parties. See Tex. R. App. P. 42.3(b), (c). This was not the first time Flucker had failed to respond to a docketing- 1 statement request.

In our February 2, 2022 letter to the parties notifying them that we had received Flucker's notice of appeal, we directed Flucker to file a docketing statement by February 14, 2022. ² Although not pointed out by Skylanding, we note that on March 30, 2022, we notified Flucker that the court reporter had informed us that Flucker had not made a reporter's-record designation.

See Tex. R. App. P. 34.6(b)(1), 35.3(b)(2). We warned him that if he did not send a designation to the court reporter and provide us with proof of that designation within 10 days, we could consider and decide those issues or points that do not require a reporter's record for a decision. See Tex. R. App. P. 37.3(c). But despite this warning, Flucker failed to take any action or to otherwise respond.

² In Skylanding's May 24, 2022 dismissal motion, Skylanding's attorney certified that he had attempted to conference with Flucker on the motion's merits but had been unable to reach him. See Tex. R. App. P. 10.1(a)(5). More than 10 days have passed, and Flucker has not responded to the motion. See Tex. R. App. P. 10.3(a).

Because Flucker has failed to prosecute his appeal and because he has failed to respond to our notices requiring a response or other action within a specified time, we grant Skylanding's motion and dismiss the appeal. See Tex. R. App. P. 42.3(b), (c), 43.2(f). /s/ Elizabeth Kerr Elizabeth Kerr Justice Delivered: June 23, 2022 ³