

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

**Dwayne James Weakley and Beatriz Weakley v. Michael Schukar;
Ellen Schukar; Shaun Siems; Suzanne Siems; Morgan Morita; Lisa
Morita; John Hammett; Lee Hammett; Chandy Verghese; Leena
Verghese; and Grayson Lee**

No. 03-26-00173-CV · No. No. 03-26-00173-CV · Decided April 3, 2026

SUMMARY

The Texas Court of Appeals, Third District, dismissed the appeal for want of prosecution because the appellants failed to pay or make arrangements to pay the trial clerk's fee for preparing the clerk's record. The appellants also failed to respond to the court's notice or establish entitlement to proceed without payment of costs.

CASE DETAILS

COURT	Texas Court of Appeals, Third District, at Austin
WRITING FOR THE COURT	Karin Crump; Chief Justice Byrne; Justice Theofanis; Justice Crump
JURISDICTION	Texas Court of Appeals, Third District, Austin
DECIDED	April 3, 2026
DOCKET	No. 03-26-00173-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal dismissed for want of prosecution after appellants failed to pay or arrange payment of the trial clerk's fee for preparing the clerk's record and failed to respond to the appellate court's notice.
PRECEDENTIAL VALUE	Published
PARTIES	Dwayne James Weakley, Beatriz Weakley v. Michael Schukar, Ellen Schukar, Shaun Siems, Suzanne Siems, Morgan Morita, Lisa Morita, John Hammett, Lee Hammett, Chandy Verghese, Leena Verghese, Grayson Lee

TOPICS

appellate procedure

costs

civil procedure

PRACTICE AREAS

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the appeal should be dismissed for want of prosecution when the clerk's record was not filed because appellants failed to pay or arrange payment of the clerk's fee and failed to respond to the appellate court's notice.

HOLDINGS

1. An appellate court may dismiss an appeal for want of prosecution when the trial-court clerk fails to file the clerk's record because the appellant failed to pay or arrange payment of the clerk's preparation fee, unless the appellant was entitled to proceed without payment of costs. Because appellants did not pay or arrange payment and did not establish entitlement to proceed without costs, dismissal was proper.

KEY QUOTATIONS

“If a trial-court clerk fails to file the clerk’s record due to an appellant’s failure to pay or make arrangements to pay for the clerk’s fee for preparing the record, the appellate court may dismiss the appeal for want of prosecution unless the appellant was entitled to proceed without payment of costs.” (at 2)

FACTUAL BACKGROUND

The clerk's record was due in the court of appeals on March 20, 2026, but the trial clerk did not file it because appellants had failed to pay or arrange payment of the clerk's preparation fee. The appellate court notified appellants, requested arrangements for the record and a status report by March 30, 2026, and warned that noncompliance could result in dismissal. Appellants neither responded nor established that they were entitled to proceed without payment of costs.

PROCEDURAL HISTORY

The appeal came from the 423rd District Court of Bastrop County. The clerk's record was not filed by the due date because appellants had not paid or arranged to pay the trial clerk's preparation fee; after receiving notice and a deadline to submit a status report, appellants did not respond, and the court dismissed the appeal.

DISPOSITION

dismissed

OPINION

PER CURIAM.

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN NO. 03-26-00173-CV Dwayne James Weakley and Beatriz Weakley, Appellants v. Michael Schukar, Ellen Schukar, Shaun Siems, Suzanne Siems, Morgan Morita, Lisa Morita, John Hammett, Lee Hammett, Chandy Verghese,

Leena Verghese, and Grayson Lee, Appellees FROM THE 423RD DISTRICT COURT OF BASTROP COUNTY NO. 423-7138, THE HONORABLE CHRISTOPHER DARROW DUGGAN, JUDGE PRESIDING MEMORANDUM OPINION The clerk's record in this appeal was due for filing in this Court on March 20, 2026.

On March 20, 2026, we notified appellants that no clerk's record had been filed due to their failure to pay or make arrangements to pay the trial clerk's fee for preparing the clerk's record. The notice requested that appellants make arrangements for the clerk's record and submit a status report regarding this appeal by March 30, 2026. Further, the notice advised appellants that their failure to comply with this request could result in the dismissal of the appeal for want of prosecution.

To date, appellants have not filed a status report or otherwise responded to this Court's notice, and the clerk's record has not been filed. If a trial-court clerk fails to file the clerk's record due to an appellant's failure to pay or make arrangements to pay for the clerk's fee for preparing the record, the appellate court may dismiss the appeal for want of prosecution unless the appellant was entitled to proceed without payment of costs.

Tex. R. App. P. 37.3(b). In this case, appellants have not established that they are entitled to proceed without payment of costs. See Tex. R. Civ. P. 145. Because appellants have failed to pay or make arrangements to pay the clerk's fee for preparing the clerk's record, this appeal is dismissed for want of prosecution. _____ Karin Crump, Justice Before Chief Justice Byrne, Justices Theofanis and Crump Dismissed for Want of Prosecution Filed: April 3, 2026 2