

COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS AT DALLAS

**Damion Ellis, Individually and as Personal Representative of the
Estate of Kayon Anthony Ellis, Deceased v. Linda Delwood, M.D.,
South Texas Dental Associates, Inc., D/B/A South Texas Dental Clinic,
Brandon Dahl, DDS, Russell Takashi Choy, DDS, and Park Cental
Surgical Center, Ltd.**

No. 05-18-01492-CV · No. 05-18-01492-CV · Decided June 25, 2019

SUMMARY

The Fifth District Court of Appeals of Texas dismissed the accelerated appeal because the appellant failed to file an overdue brief or an extension motion after being warned that the appeal could be dismissed. The court ordered the appellees to recover their appellate costs from the appellant.

CASE DETAILS

COURT	Court of Appeals for the Fifth District of Texas at Dallas
WRITING FOR THE COURT	David J. Schenck; Justice Osborne; Justice Reichek
JURISDICTION	Texas
DECIDED	June 25, 2019
DOCKET	05-18-01492-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Accelerated appeal dismissed because appellant failed to file an overdue brief or an extension motion after notice and a warning that the appeal would be dismissed.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Damion Ellis, individually and as personal representative of the Estate of Kayon Anthony Ellis, Deceased v. Linda Delwood, M.D., South Texas Dental Associates, Inc., D/B/A South Texas Dental Clinic, Brandon Dahl, DDS, Russell Takashi Choy, DDS, Park Cental Surgical Center, Ltd.

TOPICS

- appellate procedure
- civil procedure

PRACTICE AREAS

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the court should dismiss an accelerated appeal when the appellant fails to file an overdue brief or an extension motion after receiving notice and a warning of dismissal.

HOLDINGS

1. An accelerated appeal may be dismissed when the appellant fails to file an overdue brief or an extension motion after the court provides notice of the delinquency and warns that the appeal will be dismissed without further notice.

KEY QUOTATIONS

“Accordingly, we dismiss this appeal.” (2)

FACTUAL BACKGROUND

The appeal was an accelerated case in which appellant's brief was overdue. The court sent appellant a postcard notifying him that the filing deadline had expired and ordered him to file a brief and an extension motion within ten days. Appellant did not file either document or otherwise correspond with the court.

PROCEDURAL HISTORY

Damion Ellis appealed from the 193rd Judicial District Court of Dallas County, Texas, in Trial Court Cause No. DC-18-05739. After appellant's brief became overdue, the court notified appellant that the filing deadline had expired and directed him to file a brief and extension motion within ten days. Appellant filed neither and did not otherwise communicate with the court, so the court dismissed the appeal and assessed appellate costs against appellant.

DISPOSITION

dismissed

OPINION

Damion Ellis, Individually and as Personal Representative of the Estate of Kayon Anthony Ellis v. Linda Delwood, M.D., South Texas Dental Associates, Inc., D/B/A South Texas Dental Clinic, Brandon Dahl, DDS, and Russel Takashi Choy, DDS, and Park Cental Surgical Center, Ltd.
PER CURIAM.

DISMISS; and Opinion Filed June 25, 2019. In The Court of Appeals Fifth District of Texas at Dallas No. 05-18-01492-CV

DAMION ELLIS, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF KAYON ANTHONY ELLIS, DECEASED, Appellant V.

LINDA DELWOOD, M.D., SOUTH TEXAS DENTAL ASSOCIATES, INC., D/B/A
SOUTH TEXAS DENTAL CLINIC, BRANDON DAHL, DDS, AND RUSSELL TAKASHI
CHOY, DDS, AND PARK CENTAL SURGICAL CENTER, LTD., Appellees On Appeal from the
193rd Judicial District Court Dallas County, Texas Trial Court Cause No. DC-18-05739

MEMORANDUM OPINION

Before Justices Schenck, Osborne, and Reichek Opinion by Justice Schenck Appellant's brief in this accelerated case is overdue. By postcard dated May 15, 2019, we notified appellant the time for filing his brief had expired. We directed appellant to file a brief and an extension motion within ten days. We cautioned appellant that failure to file a brief and an extension motion would result in the dismissal of this appeal without further notice. To date, appellant has not filed his brief nor otherwise corresponded with the Court regarding the status of this appeal. Accordingly, we dismiss this appeal. TEX. R. APP. P. 38.8(a)(1); 42.3(b), (c). /David J. Schenck/

DAVID J. SCHENCK

JUSTICE

181492F.P05 –2– Court of Appeals Fifth District of Texas at Dallas

JUDGMENT

DAMION ELLIS, INDIVIDUALLY AND On Appeal from the 193rd Judicial District AS
PERSONAL REPRESENTATIVE OF Court, Dallas County, Texas THE ESTATE OF KAYON
ANTHONY Trial Court Cause No. DC-18-05739. ELLIS, DECEASED, Appellant Opinion
delivered by Justice Schenck. Justices Osborne and Reichek participating. No. 05-18-01492-CV V.

LINDA DELWOOD, M.D., SOUTH

TEXAS DENTAL ASSOCIATES, INC.,

D/B/A SOUTH TEXAS DENTAL

CLINIC, BRANDON DAHL, DDS, AND

RUSSELL TAKASHI CHOY, DDS, AND

PARK CENTAL SURGICAL CENTER,

LTD., Appellees In accordance with this Court's opinion of this date, this appeal is DISMISSED.

It is ORDERED that appellee LINDA DELWOOD, M.D., SOUTH TEXAS DENTAL
ASSOCIATES, INC., D/B/A SOUTH TEXAS DENTAL CLINIC, BRANDON DAHL, DDS,
AND RUSSELL TAKASHI CHOY, DDS, AND PARK CENTAL SURGICAL CENTER,
LTD. recover their costs of this appeal from appellant DAMION ELLIS, INDIVIDUALLY
AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF KAYON ANTHONY
ELLIS, DECEASED. Judgment entered this 25th day of June, 2019. –3–