

NO. 07-04-0077-CV  
IN THE COURT OF APPEALS  
FOR THE SEVENTH DISTRICT OF TEXAS  
AT AMARILLO  
PANEL A  
JULY 19, 2010

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DALE SUE JONES AND STANLEY RAY JONES, APPELLANTS

V.

TED SCOTT, M.D., APPELLEE

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FROM THE 72<sup>ND</sup> DISTRICT COURT OF LUBBOCK COUNTY;  
NO.2001-513;918; HONORABLE J. BLAIR CHERRY, JR., JUDGE<sup>1</sup>

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Before CAMPBELL and HANCOCK and PIRTLE, JJ.

**ORDER**

By an order issued July 7, 2010, this Court addressed the *Motion to Dismiss for Failure to Prosecute*, filed on June 3, 2010, by the Appellee, Dr. Ted Scott. Furthermore, due to the death of Appellant, Dale Sue Jones, this Court found that a licensed attorney was required to represent the interests of her estate in this appeal. In

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<sup>1</sup>Hon. Richard Dambold, (Ret.), sitting by assignment. Tex. Gov't Code Ann. §75.002(a)(3) (Vernon 2005).

the course of attempting to summarize the procedural history of this case, we concluded that New Reflections, a defendant below, was not a party to this appellate proceeding. Based upon that statement, New Reflections sought to withdraw its *Motion of Appellee to Extend Time to File Brief*, which was filed on the same day our order was issued. Having investigated this matter further, we conclude that we were mistaken in our conclusion that New Reflections was not properly before this Court.

A review of the First Supplemental Clerk's Record reveals that a *Notice of Intent to Appeal* (See Appendix 1) was filed, giving notice of Appellants' intent to appeal the order of the trial court issued on November 6, 2003, granting New Reflections's *Motion for Summary Judgment*, pertaining to Appellants' DTPA cause of action against New Reflections. Although this notice of appeal was filed with the trial court clerk on November 17, 2003, it was inadvertently not forwarded to this Court until July 7, 2004. Therefore, although it predates the notice of appeal that initiated this cause (See Appendix 2), it does constitute proper notice of appeal as to Appellants' DTPA cause of action against New Reflections. Therefore, we withdraw that portion of our prior order of July 7, 2010, pertaining to the status of Appellants' claims against New Reflections, and hereby clarify that New Reflections is a party to this proceeding. Despite the request to withdraw New Reflections's *Motion of Appellee to Extend Time to File Brief*, we now grant that motion and order that Appellee, New Reflections, have until August 6, 2010, to file its brief in response to *Appellants' Brief in Chief* filed by Appellant, Stanley Jones.

In accordance with our order of July 7, 2010, a brief presenting the merits of Dale Sue Jones's claims is due to be filed in this Court on or before October 4, 2010. By

order of this Court, Appellee, New Reflections, is *sua sponte* granted an extension of time in which to file its brief in response to the claims of Dale Sue Jones until thirty days after her brief, if any, is filed.

It is so ordered.

Per Curiam