

NO. 07-09-0092-CV  
IN THE COURT OF APPEALS  
FOR THE SEVENTH DISTRICT OF TEXAS  
AT AMARILLO  
PANEL A  
MAY 27, 2009

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JOHN D. FAILS, JR., APPELLANT

V.

MICHAEL "MIKE" LOWE, APPELLEE

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FROM THE 108TH DISTRICT COURT OF POTTER COUNTY;  
NO. 97,237-E; HONORABLE DOUGLAS WOODBURN, JUDGE

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Before CAMPBELL and HANCOCK and PIRTLE, JJ.

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**ORDER OF DISMISSAL**

Appellant, John D. Fails, Jr., filed suit against Michael Lowe, in his official capacity as a correctional officer at the Neal Unit of the Texas Department of Criminal Justice, and requested redress for retaliation and harassment as well for violations of his rights under the Texas Constitution. The trial court dismissed Fails's suit on January 30, 2009.

Fails filed his notice of appeal on March 19, 2009. Under the Texas Rules of Appellate Procedure, Fails's notice of appeal was due no later than March 1. See TEX. R. APP. P. 26.1. On April 21, 2009, the appellate clerk's office sent Fails a letter stating that

it appeared that our jurisdiction was not properly invoked. Further, the letter requested that Fails show how this court does have jurisdiction and why the appeal should not be dismissed for want of jurisdiction. To date, we have had no response to the court's request.<sup>1</sup> We have not received any explanation, reasonable or otherwise, to justify the late filing of the notice of appeal. See Miller v. Greenpark Surgery Assocs., Ltd., 974 S.W.2d 805, 808 (Tex.App.–Houston [14<sup>th</sup> Dist.] 1998, no pet.); Verburgt v. Dorner, 959 S.W.2d 615, 617 (Tex. 1997).

We, therefore, dismiss the appeal. See TEX. R. APP. P. 42.3.

Mackey K. Hancock  
Justice

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<sup>1</sup>Even if appellant had requested an extension of time to file his notice of appeal, his notice of appeal and a motion requesting an extension were due within 15 days from the expiration of the deadline for filing a timely notice of appeal. See TEX. R. APP. P. 26.3.