

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-10-00627-CV

Linda Giesenschlag Brower and Ted Larson, Appellants

v.

Jack Giesenschlag, Appellee

**FROM THE DISTRICT COURT OF COMAL COUNTY, 22ND JUDICIAL DISTRICT
NO. C2010-0071A, HONORABLE CHARLES A. STEPHENS II, JUDGE PRESIDING**

DISSENTING OPINION

I respectfully dissent. This Court does not have jurisdiction over an untimely appeal, *see* Tex. R. App. P. 2; *In re K.A.F.*, 160 S.W.3d 923, 928 (Tex. 2005), and we are obligated to determine our own authority to act. *See M. O. Dental Lab v. Rape*, 139 S.W.3d 671, 673 (Tex. 2004). It appears that appellants' notice of appeal is untimely, but it also appears that it might suffice as a notice of restricted appeal. *See* Tex. R. App. P. 26.1(b), (c).

Because the question of this Court's jurisdiction has not been decided, I would abate the appeal and direct the parties to file a brief addressing whether a jurisdictional basis exists for treating appellants' case as a direct or restricted appeal. *See In re J.D.O.*, No. 07-10-00370-CV, 2010 Tex. App. LEXIS 8423, at *1-2 (Tex. App.—Amarillo Oct. 20, 2010) (order of abatement directing parties to file brief addressing whether notice of appeal constituted notice of restricted appeal thus conferring jurisdiction on the appellate court).

Melissa Goodwin, Justice

Before Chief Justice Jones, Justices Henson and Goodwin

Filed: May 26, 2011