

**DISMISS; and Opinion Filed December 1, 2014.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-14-01317-CV**

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**RICKEY WAYNE TOLBERT, Appellant**

**V.**

**GEORGE A. OTSTOTT, Appellee**

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**On Appeal from the County Court at Law No. 1  
Kaufman County, Texas  
Trial Court Cause No. 89868-CC**

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**MEMORANDUM OPINION**

Before Justices FitzGerald, Lang, and Brown  
Opinion by Justice Brown

By motion filed September 29, 2014, Rickey Wayne Tolbert, appearing pro se, seeks leave to appeal the trial court's July 11, 2014 order granting final summary judgment. The motion follows the dismissal for want of jurisdiction of an appeal of the same judgment to the Tenth Court of Appeals in Waco, Texas. *See Tolbert v. Otstott*, No. 10-14-00240-CV, 2014 WL 4635706 \*1 (Tex. App.—Waco Sept. 11, 2014, no pet.) (citing TEX. GOV'T CODE ANN. §§ 22.220(a), 22.201(f),(k) (West Supp. 2013)). Because the disposition of Tolbert's motion for leave depends on whether a motion for new trial or to modify judgment was timely filed, as otherwise Tolbert would have needed to file his motion for leave no later than August 26, 2014, we requested a copy of the trial court's docket sheet. *See* TEX. R. APP. P. 4.1, 26.1, 26.3. The

docket sheet we received reflected no motion for new trial or to modify judgment had been filed, making Tolbert's motion for leave untimely. *See id.* 26.1, 26.3.

Pursuant to rule of appellate procedure 42.3, we ordered Tolbert to file a letter brief addressing the timeliness of the appeal. *See id.* 42.3(a); *Garza v. Hibernia Nat'l Bank*, 227 S.W.3d 233, 233 (Tex. App.--Houston [1st Dist.] 2007, no pet.) (timely filing of notice of appeal invokes court of appeals' jurisdiction). Tolbert complied, but his letter presents nothing showing the appeal is timely. Accordingly, we deny the motion and dismiss the appeal. *See* TEX. R. APP. P. 42.3(a); *Garza*, 227 S.W.3d at 233.

/Ada Brown/  
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ADA BROWN  
JUSTICE

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**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

RICKEY WAYNE TOLBERT, Appellant

No. 05-14-01317-CV      V.

GEORGE A. OTSTOTT, Appellee

On Appeal from the County Court at Law  
No. 1, Kaufman County, Texas

Trial Court Cause No. 89868-CC.

Opinion delivered by Justice Brown. Justices  
FitzGerald and Lang participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal.

We **ORDER** that appellee George A. Otsott recover his costs, if any, of this appeal from appellant Rickey Wayne Tolbert.

Judgment entered this 1st day of December, 2014.