

Opinion issued September 29, 2015



In The
Court of Appeals
For The
First District of Texas

NO. 01-15-00162-CV

ANTHONY J. CANN, Appellant

V.

HOMETOWN BANK, N.A., Appellee

**On Appeal from the 212th District Court
Galveston County, Texas
Trial Court Cause No. 14-CV-0668**

MEMORANDUM OPINION

Appellant, Anthony J. Cann, has failed to timely file his appellate brief. *See* TEX. R. APP. P. 38.6(a), 38.8(a)(1). On August 27, 2015, the Clerk of this Court notified appellant that this appeal was subject to dismissal if he did not file an appellate brief within ten days of the date of that notice. *See* TEX. R. APP. P. 5,

42.3(c). On September 3, 2015, appellant’s counsel timely responded to the notice by filing a “Notice of Nonsuit Without Prejudice,” which we construe as a motion to dismiss the appeal. *See* TEX. R. APP. P. 42.1(a)(1). Although the motion does not contain a certificate of conference, it has a certificate of service on the appellee’s counsel and more than ten days have passed with no response filed. *See id.* 10.1(a)(5), 10.3(a)(2). No other party has filed a notice of appeal and no opinion has issued. *See id.* 42.1(a)(1), (c).

Accordingly, we **grant** the motion and **dismiss** the appeal. *See* TEX. R. APP. P. 42.1(a)(1), 43.2(f). We dismiss any other pending motions as moot.

PER CURIAM

Panel consists of Justices Jennings, Higley, and Brown.