

NO. 07-02-0119-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL A
MAY 7, 2002

PETRO EXPRESS, LTD. AND WILLIAM BOBBORA, APPELLANTS

V.

HORKEY OIL COMPANY, INC., APPELLEE

FROM THE 99TH DISTRICT COURT OF LUBBOCK COUNTY;
NO. 2001-512745; HONORABLE MACKEY HANCOCK, JUDGE

Before BOYD, C.J., and REAVIS and JOHNSON, JJ.

On November 7, 2001, summary judgment was rendered in favor of Horkey Oil Company, Inc. and against appellants Petro Express, Ltd. and William Bobbora. A motion for new trial was filed extending the time in which to file the notice of appeal to February 20, 2002, which includes the 15-day window following the 90th day deadline. Tex. R. App. P. 26.1(a)(1) and 26.3. However, on March 11, 2002, appellants filed a motion to extend

the time to file their notice of appeal in this Court explaining that they mistakenly believed they had 30 days from the overruling of their motion for new trial by operation of law to file the notice of appeal. They simultaneously filed the notice of appeal in the trial court. Thus, both the notice of appeal and motion for extension of time were untimely.

Moreover, by letter dated March 26, 2002, this Court directed appellants to pay the required filing fee of \$125 together with a \$10 fee for the motion for extension of time, noting that failure to do so might result in dismissal. Unless a party is excused from paying a filing fee, the Clerk of this Court is required to collect filing fees set by statute or the Supreme Court when an item is presented for filing. See Tex. R. App. P. 5 and 12.1(b). Appellants responded to this Court's letter by filing a motion to dismiss with payment of the \$10 fee for that motion. Thus, because the notice of appeal is untimely and the filing fees of \$125 and \$10 remain unpaid, we must dismiss the appeal.

Accordingly, the appeal is dismissed for want of jurisdiction and failure to comply with the Texas Rules of Appellate Procedure and with a notice from the Clerk requiring payment of the filing fee and the motion fee. Tex. R. App. P. 26.1 and 42.3(c). Our disposition of this appeal renders appellants' motion to dismiss moot.

Don H. Reavis
Justice

Do not publish.