



**IN THE
TENTH COURT OF APPEALS**

No. 10-13-00018-CV

DEMETRIUS HOLLOWAY,

Appellant

v.

ERIC ANDIKA,

Appellee

**From the 12th District Court
Walker County, Texas
Trial Court No. 26144**

MEMORANDUM OPINION

Demetrius Holloway attempts to appeal from the trial court's judgment dismissing his cause of action. By letter dated February 15, 2013, the Clerk of this Court notified Holloway that the appeal was subject to dismissal because it appeared that the notice of appeal was untimely. *See* TEX. R. APP. P. 26.1(a). The Clerk also warned Holloway that the appeal would be dismissed unless, within 21 days of the date of the letter, a response was filed showing grounds for continuing the appeal. *See* TEX. R. APP. P. 44.3.

We received a response from Holloway stating that he filed a Motion to Vacate & Renew Trial on September 26, 2012. Holloway indicates that the Motion to Vacate & Renew Trial extended the time to file his notice of appeal, and he cites TEX. R. APP. P. 26.1(a) (1) as authority. The judgment was signed on September 7, 2012, and the notice of appeal was filed on January 18, 2013. A notice of appeal must be filed within 90 days after the date the judgment was signed if any party timely files a motion for new trial. TEX. R. APP. P. 26.1(a) (1). The notice of appeal was not filed within 90 days after the judgment was signed. The response from Holloway does not show grounds for continuing the appeal.

Absent a specific exemption, the Clerk of the Court must collect filing fees at the time a document is presented for filing. TEX. R. APP. P. 12.1(b); Appendix to TEX. R. APP. P., Order Regarding Fees (Amended Aug. 28, 2007, eff. Sept. 1, 2007). *See also* TEX. R. APP. P. 5; 10TH TEX. APP. (WACO) LOC. R. 5; TEX. GOV'T CODE ANN. § 51.207(b); § 51.941(a) (West 2005); and § 51.208 (West Supp. 2011). Under these circumstances, we suspend the rule and order the Clerk to write off all unpaid filing fees in this case. TEX. R. APP. P. 2. The write-off of the fees from the accounts receivable of the Court in no way eliminates or reduces the fees owed by appellants.

Accordingly, this appeal is dismissed.

AL SCOGGINS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Appeal dismissed
Opinion delivered and filed March 21, 2013
[CV06]