



**IN THE
TENTH COURT OF APPEALS**

No. 10-13-00254-CV

BARRY EMMETT,

Appellant

v.

HEALY, ET AL,

Appellee

**From the 278th District Court
Walker County, Texas
Trial Court No. 26275**

MEMORANDUM OPINION

Barry Emmett attempts to appeal from the trial court's order on his Motion to Voluntarily Dismiss/Nonsuit his Lawsuit. The judgment was entered on May 13, 2013, and Emmett filed a notice of appeal on July 30, 2013. The notice of appeal states that Emmett had "no capacity to comply with the jurisdictional 30 days." By letter dated August 9, 2013, the Clerk of this Court notified Emmett 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 Emmett 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. Emmett did not file a response showing 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 September 19, 2013
[CV06]