

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-03-00226-CV

Henry J. Novak and Bastrop Heritage Oaks, Ltd., Appellants

v.

Robert Patterson, Appellee

**FROM THE DISTRICT COURT OF BASTROP COUNTY, 21ST JUDICIAL DISTRICT
NO. 24,154, HONORABLE TERRY L. FLENNIKEN, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellee Robert Patterson filed with this Court a motion to dismiss appeal for want of jurisdiction, informing this Court that appellants Henry J. Novak and Bastrop Heritage Oaks, Ltd. failed to timely file their notice of appeal. We will grant Patterson's motion and dismiss the appeal for want of jurisdiction. *See* Tex. R. App. P. 42.3(a).

According to the clerk's record, the trial court signed the final judgment in this cause on January 14, 2003. Appellants filed a request for findings of fact and conclusions of law on January 31, 2003. Thus, a notice of appeal was due to be filed on April 14, 2003. *See id.* 26.1(a)(4). Appellants filed their notice of appeal on April 17, 2003; they did not file a motion to extend time to file their notice of appeal.

Because appellants did not file their notice of appeal until more than ninety days after the final judgment was signed, their notice of appeal was untimely. The time period for filing a

perfecting instrument is jurisdictional. *Velasquez v. Harrison*, 934 S.W.2d 767, 770 (Tex. App.—Houston [1st Dist.] 1996, no writ). When an appellant fails to file timely a perfecting instrument or properly seek an extension of time to file a perfecting instrument, the appellate court must dismiss the cause for lack of jurisdiction. *Id.*

Because appellants' notice of appeal was not timely filed, this Court is without jurisdiction over the appeal. Accordingly, we grant appellee's motion and dismiss this appeal for want of jurisdiction. *See* Tex. R. App. P. 42.3(a).

David Puryear, Justice

Before Chief Justice Law, Justices B. A. Smith and Puryear

Dismissed for Want of Jurisdiction on Appellee's Motion

Filed: August 29, 2003