

NO. 12-17-00071-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

<i>GARY WAYNE GARRETT AND THE ESTATE OF CINDY GARRETT, APPELLANTS</i>	§	<i>APPEAL FROM THE 114TH</i>
<i>V.</i>	§	<i>JUDICIAL DISTRICT COURT</i>
<i>AMERICAN STATE BANK, APPELLEE</i>	§	<i>SMITH COUNTY, TEXAS</i>

***MEMORANDUM OPINION
PER CURIAM***

This appeal is being dismissed for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a). On March 6, 2017, we notified Appellants, Gary Wayne Garrett and the Estate of Cindy Garrett, that the information received in the appeal failed to show the jurisdiction of the Court, i.e., there was no notice of appeal filed within the time allowed by Texas Rule of Appellate Procedure 26.1 and no timely motion for an extension of time to file same as permitted by Texas Rule of Appellate Procedure 26.3. We notified Appellants that the appeal would be dismissed unless the information was amended by March 16, 2017 to show the jurisdiction of this Court. We received no response from Appellant.

A timely notice of appeal must be filed in order to invoke this Court's jurisdiction. *See* TEX. R. APP. P. 25.1(b). The notice of appeal in a civil case must be filed within thirty days after the judgment is signed. *See* TEX. R. APP. P. 26.1. In this case, the trial court signed a default judgment on December 30, 2016. The record does not indicate that Appellants timely filed a motion for new trial. *See* TEX. R. APP. P. 26.1(a). Therefore, the notice of appeal was due to have been filed not later than January 30, 2017. Because the notice of appeal was not filed until March 3, 2017, it was untimely.

Accordingly, given that Appellants' notice of appeal was not filed within thirty days after the trial court's judgment was signed, we *dismiss* the appeal for *want of jurisdiction*.¹ See TEX. R. APP. P. 42.3(a).

Opinion delivered March 22, 2017.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)

¹ We also note that, on March 6, 2017, the clerk of this Court notified Appellants that the filing fee in this appeal is due. See TEX. R. APP. P. 5. Appellants were informed that failure to remit the filing fee on or before March 16, 2017, would result in the Court's taking appropriate action, including dismissal of the case without further notice. See TEX. R. APP. P. 42.3(c). The date for remitting the filing fee has passed, and Appellants have not complied with the Court's request. See *id.* (stating that appeal is subject to dismissal when "the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time").



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MARCH 22, 2017

NO. 12-17-00071-CV

GARY WAYNE GARRETT AND THE ESTATE OF CINDY GARRETT,
Appellants
V.
AMERICAN STATE BANK,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 16-2186-B)

THIS CAUSE came to be heard on the appellate record; and the same being considered, it is the opinion of this Court that this appeal should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED by this Court that this appeal be, and the same is, hereby **dismissed for want of jurisdiction**; and that this decision be certified to the court below for observance.

By *per curiam* opinion.
Panel consisted of Worthen, C.J., Hoyle, J. and Neeley, J.