

Dismissed and Opinion filed April 5, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00358-CV

J.W. JANKOWSKI and ROBERT WALKER, Appellants

V.

G.W. MACHINE TOOLS, INC. and G.W. MAINTENANCE SERVICE, INC., Appellees

**On Appeal from the 21st District Court
Washington County, Texas
Trial Court Cause No. 31,376**

O P I N I O N

This is the second attempt by appellants, J.W. Jankowski and Robert Walker, to appeal from an interlocutory order denying their motion for summary judgment. Because appellants' notice of appeal was not timely filed, we dismiss the appeal for want of jurisdiction.

On September 16, 1999, the trial court signed an order denying appellants' motion for summary judgment. Although interlocutory, the court's order denying summary judgment was appealable because the motion was based on an assertion of governmental immunity. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(5) (Vernon Supp. 2000). Under Texas Rule of

Appellate Procedure 28, an appeal from an interlocutory order is accelerated, and the notice of appeal must be filed within 20 days after the order is signed. TEX. R. APP. P. 26.1(b). Appellants did not file their notice of appeal until January 20, 2000. Accordingly, on March 2, 2000, we ordered the appeal dismissed for want of jurisdiction. *G.W. Machine Tools, Inc. v. Jankowski*, No. 14-00-00096-CV (Tex. App.—Houston [14th Dist.] Mar. 2, 2000, pet. denied) (not designated for publication), 2000 WL 232143.

On March 8, 2000, appellants filed a Second Notice of Appeal, stating their desire to appeal from “the denial of their motion for summary judgment entered via order dated February 22, 2000.” However, the trial court’s February 22, 2000 order is not appealable. On its face, the February 22 order purports to do two things: (1) it withdraws and rescinds the trial court’s September 16, 1999 order denying appellants’ motion for summary judgment; and (2) it substitutes a January 11, 2000 order denying appellants’ motion for reconsideration “in lieu of and in place of the previous rescinded order.” Thus, the February 22 order is not an order that “denies a motion for summary judgment that is based on an assertion of immunity.” See TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(5). Even if we were to consider the January 11 order as the order denying appellants’ motion for summary judgment, appellants’ Second Notice of Appeal was not filed within 20 days of that order, and therefore was untimely.

Appellants argue in the alternative that the February 22 order operated retroactively to make their first notice of appeal, filed on January 20, 2000, timely. This same argument was raised by appellants and rejected by this court in dismissing the previous appeal based on that notice. We find no basis for reconsideration of this decision.

On March 7, 2001, all parties were notified of our intent to dismiss the appeal on the court’s own initiative for want of jurisdiction. See TEX. R. APP. P. 42.3. Appellants’ response fails to demonstrate meritorious grounds for continuing the appeal.

The appeal is ordered dismissed.

PER CURIAM

Judgment rendered and Opinion filed April 5, 2001.

Panel consists of Justices Edelman and Frost and Senior Chief Justice Murphy.¹

Do Not Publish — TEX. R. APP. P. 47.3(b).

¹ Senior Chief Justice Paul C. Murphy sitting by assignment.