

**Dismissed and Opinion filed November 29, 2001.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-01-00107-CV**

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**P. J. MURPHEY HARMON, Appellant**

**V.**

**JOHNSON & BRILL, Appellee**

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**On Appeal from the 11th District Court  
Harris County, Texas  
Trial Court Cause No. 98-47858**

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**MEMORANDUM OPINION**

This is an appeal from a judgment signed October 31, 2000. The clerk's record was filed on March 9, 2001. The reporter's record was filed on May 2, 2001. Appellant requested and received three extensions of time to file the brief. Following these extensions, the brief was due on September 10, 2001. Appellant tendered his brief on September 12, 2001, but the brief was not in compliance with TEX. R. APP. P. 9.4. Accordingly, the brief was returned for correction. No corrected brief has been filed.

On September 28, 2001, appellee filed a motion to dismiss the appeal for want of prosecution. *See* TEX. R. APP. P. 42.3(b). In this motion, appellee also sought sanctions against appellant for filing a frivolous appeal.

Because appellant has failed to file a brief, we grant appellee's motion to dismiss for want of prosecution.

Appellee also seeks \$1,000 in attorney's fees because appellant filed a defective brief that raised frivolous grounds for appeal. If a court of appeals finds that an appeal is frivolous, it may, on the motion of any party or on its own initiative, after notice and a reasonable opportunity for response, award the prevailing party just damages. TEX. R. APP. P. 45. Whether to grant sanctions is a matter of discretion, which we exercise with prudence and caution, and only after careful deliberation. *Bridges v. Robinson*, 20 S.W.3d 104, 115 (Tex. App.--Houston [14th Dist.] 2000, no pet.). Although imposing sanctions is within our discretion, we will do so only in circumstances that are truly egregious. *City of Houston v. Crabb*, 905 S.W.2d 669, 676 (Tex.App.--Houston [14 th Dist.] 1995, no writ).

In determining whether sanctions are appropriate, we carefully consider the record from the appellant's point of view at the time the appeal was filed. *City of Alamo v. Holton*, 934 S.W.2d 833, 837 (Tex.App.-- Corpus Christi 1996, no writ). Among the factors we consider are whether the appellant had a reasonable expectation of reversal and whether it pursued the appeal in bad faith. *Tate v. E.I. DuPont de Nemours & Co.*, 954 S.W.2d 872, 875 (Tex.App.--Houston [14 th Dist.] 1997, no pet.); *Color Tile, Inc. v. Ramsey*, 905 S.W.2d 620, 624 (Tex.App.--Houston [14 th Dist.] 1995, no writ). Courts may also consider an appellant's failure to respond to a motion for sanctions. *Chapman v. Hootman*, 999 S.W.2d 118, 125 (Tex.App.-Houston [14 th Dist.] 1999, no pet.).

In the instant case, appellant tendered to this court an untimely brief that failed to comply with the requirements of Rule 9.4, appellant failed to file a corrected brief, and failed to respond to appellee's motion for sanctions, after receiving notice of the motion Although

courts, including this one, have imposed sanctions for poorly written briefs or briefs raising meritless arguments, *see Bridges*, 20 S.W.3d at 116 (brief failed to address extensive contradictory proof, failed to brief one issue adequately, failed to provide sufficient proof on an issue, and cited to dissenting opinion as controlling authority), we must confine our review to the record, briefs, and other papers on file in this case. Based on this review, we are unable to determine that the appeal is objectively frivolous. Therefore, we deny appellee's request for sanctions.

The appeal is ordered dismissed.

PER CURIAM

Judgment rendered and Opinion filed November 29, 2001.

Panel consists of Justices Anderson, Hudson, and Frost.

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