IN THE SUPREME COURT OF TEXAS

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NO. 96-1026

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JOHN VERBURGT, INDIVIDUALLY AND A/N/F OF THOMAS VERBURGT, TIMOTHY VERBURGT AND JOSEPH VERBURGT, PETITIONERS

v.

PATRICIA M. DORNER AND THE METHODIST MISSION HOME, RESPONDENTS

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ON APPLICATION FOR WRIT OF ERROR TO THE
COURT OF APPEALS FOR THE NINTH DISTRICT OF TEXAS

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Argued on April 24, 1997

JUSTICE BAKER, dissenting.

The court of appeals reached the decision required by applying the plain and unambiguous language of Rule 41(a)(2). *See* TEX. R. APP. P. 41(a)(1) and (2); *Davies v. Massey*, 561 S.W.2d 799, 801 (Tex. 1978); *Glidden Co. v. Aetna Cas. & Sur. Co.*, 291 S.W.2d 315, 318 (Tex. 1956); *see also Miller v. Miller*, 848 S.W.2d 344, 345 (Tex. App.--Texarkana 1993, no writ); *El Paso Sharky's Billiard Parlor, Inc. v. Amparan*, 831 S.W.2d 3,5 (Tex. App.--El Paso 1992, writ denied).

The Court's opinion dispenses with Rule 41(a)(2)'s requirements, and amends the rule by judicial fiat. The Court's opinion is contrary to its own precedent. *See State Dept. of Highways v. Payne*, 838 S.W.2d 235, 241 (Tex. 1992)("[W]e do not revise our rules by opinion."); *Alvarado v. Farah Mfg. Co.*, 830 S.W.2d 911, 915 (Tex 1992)(same). I would deny the writ[1]. Because the Court decides otherwise, I dissent.

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James A. Baker,
Justice

OPINION DELIVERED: December 4, 1997

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[1] I also dissent to *Verburgt's* companion cases. *See Boyd v. American Indem. Co.*, _____ S.W.2d _____(Tex. 1997); *Harlan v. Howe State Bank*, _____S.W.2d _____(Tex. 1997); *Holmes v. Home State County Ins.*, _____S.W.2d _____(Tex. 1997).