

# IN THE SUPREME COURT OF TEXAS

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No. 96-1263  
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SUE MILLER, ET AL., PETITIONERS

v.

METRO HEALTH FOUNDATION,  
D/B/A OAK BROOK HEALTH CARE CENTER, INC., RESPONDENT

=====  
ON APPLICATION FOR WRIT OF ERROR TO THE  
COURT OF APPEALS FOR THE ELEVENTH DISTRICT OF TEXAS  
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JUSTICE HECHT delivered the opinion of the Court, in which CHIEF JUSTICE PHILLIPS, JUSTICE GONZALEZ, JUSTICE SPECTOR, and JUSTICE OWEN join.

JUSTICE ENOCH issued a dissenting opinion, in which JUSTICE BAKER, JUSTICE ABBOTT, and JUSTICE HANKINSON join.

Petitioner timely perfected her appeal, but the transcript was filed two days late, and petitioner did not file a motion to extend the time for filing the transcript within the fifteen-day period prescribed by former Rule 54(c), TEX. R. APP. P. Consequently, the court of appeals dismissed the appeal for want of jurisdiction. In *Verburgt v. Dorner*, \_\_\_ S.W.2d \_\_\_, \_\_\_ (Tex. 1997), we held “that a motion for extension of time is implied when a party, acting in good faith, files a cost bond within the fifteen-day period in which [former] Rule 41(a)(2) [of the Rules of Appellate Procedure] permits parties to file a motion to extend.” We apply this same rule to the filing of the appellate record. Our decision does not conflict with the holding in *B. D. Click Co. v. Safari Drilling Corp.*, 638 S.W.2d 860 (Tex. 1982), because the appellant in that case filed neither a motion for extension of time nor the transcript within the time permitted for filing the motion.

Accordingly, without hearing oral argument, the Court grants petitioner’s motion for rehearing of the denial of her application for writ of error, grants her application, reverses the judgment of the court of appeals, and remands the case to that court to determine whether petitioner can reasonably explain the need to extend the time for filing the transcript, and if so, to proceed to

consider the appeal. TEX. R. APP. P. 59.1

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Nathan L. Hecht  
Justice

Opinion delivered: March 19, 1998