

August 6, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 04-50152
Summary Calendar

CYNTHIA CURRY; TIM CURRY,

Plaintiffs-Appellants,

versus

HEB FOOD STORES, INC.; CHARLES
BUTT; DAN E. BUTT,

Defendants-Appellees.

Appeal from the United States District Court for
the Western District of Texas
(USDC No. A-02-CV-771-LY)

Before REAVLEY, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Summary judgment was properly granted by the district court based on the reasoning in the magistrate's report and recommendations. The issue of whether the

* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

district court abused its discretion in denying Plaintiffs' motion for extension of time was not raised in the notice of appeal and is therefore waived.

AFFIRMED.