

DISMISS and Opinion Filed August 30, 2019



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-00915-CV

**WILLIAM BRYER, Appellant
V.
MILLENNIUM RESTAURANTS GROUPS INC., Appellee**

**On Appeal from the 193rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-19-02603**

MEMORANDUM OPINION

Before Chief Justice Burns, Justice Molberg, and Justice Nowell
Opinion by Chief Justice Burns

This appeal, filed August 5, 2019, challenges the trial court's July 9, 2019 order denying appellant's motion for new trial. Asserting, in part, the appeal was untimely filed, appellee has moved to dismiss the appeal. Appellant has not filed a response.

Although a court of appeals may review an order denying a motion for new trial, the deadline for filing a notice of appeal runs from the date the judgment is signed, not the date of the order denying the motion. *See* TEX. R. APP. P. 26.1 (deadline for filing appeal runs from date of judgment); *Naaman v. Grider*, 126 S.W.3d 73, 74 n. 2 (Tex. 2003) (per curiam) (same); *Strackbein v. Prewitt*, 671 S.W.2d 37, 38 (Tex. 1984) (order denying motion for new trial is reviewable). Generally, a notice of appeal must be filed within thirty days of judgment. *See* TEX. R. APP. P. 26.1. However, when a request for findings of fact and conclusions of law or motion for new trial,

to modify judgment, or to reinstate is timely filed, the notice of appeal is due within ninety days of judgment. *See id.* 26.1(a). A grace period is provided under Texas Rule of Appellate Procedure 26.3 conditioned on the notice of appeal being filed within fifteen days of the date it is due and a motion reasonably explaining the need for an extension also being filed. *See id.* 26.3; *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997).

The record here reflects the final judgment was signed April 15, 2019 and a motion for new trial was timely filed May 13, 2019. Accordingly, the notice of appeal was due July 15, 2019 or, with an extension motion, July 30, 2019. *See id.* 4, 26.1(a), 26.3. Because appellant filed this appeal beyond the deadline, we lack jurisdiction over the appeal. *See Brashear v. Victoria Gardens of McKinney, LLC*, 302 S.W.3d 542, 545 (Tex. App.—Dallas 2009, no pet.) (op. on reh'g) (timely filing of a notice of appeal is jurisdictional). Accordingly, we grant appellee's motion and dismiss the appeal. *See* TEX. R. APP. P. 42.3(a).

/Robert D. Burns, III/
ROBERT D. BURNS, III
CHIEF JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

WILLIAM BRYER, Appellant

No. 05-19-00915-CV V.

MILLENNIUM RESTAURANTS
GROUPS INC., Appellee

On Appeal from the 193rd Judicial District
Court, Dallas County, Texas

Trial Court Cause No. DC-19-02603.

Opinion delivered by Chief Justice Burns,
Justices Molberg and Nowell participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal.

We **ORDER** that appellee Millennium Restaurants Groups Inc. recover its costs, if any, of this appeal from appellant William Bryer.

Judgment entered August 30, 2019.