

Appeal Dismissed and Memorandum Opinion filed March 8, 2011.



In The

**Fourteenth Court of Appeals**

---

NO. 14-08-01038-CV

---

**ERNESTINE JIMENEZ LEWIS, Appellant**

**V.**

**RICHARD JACK LEWIS, Appellee**

---

**On Appeal from the 245th District Court  
Harris County, Texas  
Trial Court Cause No. 2006-52042**

---

**MEMORANDUM OPINION**

This is an attempted appeal from a judgment signed August 20, 2008. Appellant's notice of appeal was filed October 31, 2008. Appellee filed a motion to dismiss the appeal for want of jurisdiction because no motion for new trial was timely filed. Appellant alleged a motion for new trial was filed on September 5, 2008. We ordered a supplemental clerk's record containing the motion for new trial. *See* Tex. R. App. P. 34.5(c)(1). The district clerk filed a supplemental clerk's record certifying that no motion for new trial was filed. We granted appellee's motion and dismissed the appeal.

On rehearing, appellant reasserted her claim that a motion for new trial was timely filed on September 5, 2008. We granted appellant's motion, withdrew our opinion, and reinstated the appeal. The appeal was then abated for the trial court to determine whether

a motion for new trial was timely filed and, if so, whether it had been lost or destroyed. *See* Tex. R. App. P. 34.5(e). The trial court conducted a hearing and entered findings of fact. The trial court found there was no evidence that a motion for new trial was filed pursuant to local rules on or about September 5, 2008.

Appellant has also argued that a motion for reconsideration filed July 25, 2008, should operate as a prematurely filed motion for new trial and extend the appellate timetables. The July 25, 2008 motion is in the record before this court and is a motion to reconsider the arbitration award. We do not dispute that a motion to reconsider is the same as a motion for new trial, or that a motion for new trial filed before the judgment is signed is a timely motion. However, this appeal is from the trial court's judgment, not the arbitrator's award. The record before this court does not contain any motion challenging the trial court's judgment.

Accordingly, the record reflects the notice of appeal was not timely filed. The judgment was signed on August 20, 2008. No motion for new trial was filed. The notice of appeal must be filed within thirty days after the judgment is signed when appellant has not filed a timely motion for new trial, motion to modify the judgment, motion to reinstate, or request for findings of fact and conclusion of law. *See* Tex. R. App. P. 26.1. The notice of appeal was not filed until October 31, 2008. A motion for extension of time is necessarily implied when an appellant, acting in good faith, files a notice of appeal beyond the time allowed by rule 26.1, but within the fifteen-day grace period provided by Rule 26.3 for filing a motion for extension of time. *See Verburgt v. Dorner*, 959 S.W.2d 615, 617-18 (1997) (construing the predecessor to Rule 26). Appellant's notice of appeal was not filed within the fifteen-day period provided by rule 26.3

For these reasons, we order the appeal dismissed.

PER CURIAM

Panel consists of Justices Brown, Christopher, and Jamison.