

*Court Of Appeals
Fourth Court of Appeals District of Texas
San Antonio*



MEMORANDUM OPINION

No. 04-08-00129-CV

In the **INTEREST OF C.E.R.**,

From the 225th Judicial District Court, Bexar County, Texas
Trial Court No. 2007-PA-01369
Honorable Peter A. Sakai, Judge Presiding

PER CURIAM

Sitting: Alma L. López, Chief Justice
Catherine Stone, Justice
Steven C. Hilbig, Justice

Delivered and Filed: October 1, 2008

DISMISSED FOR LACK OF JURISDICTION

This is an appeal of the trial court's default final order that terminated appellants' parental rights to the child, C.E.R., granted an adoption, and created a parent-child relationship between C.E.R. and appellees. Appellees filed a motion to dismiss this appeal on August 11, 2008. Appellants have not responded to the motion. Because the record establishes the notice of appeal was not timely filed, we dismiss the appeal for lack of jurisdiction.

The trial court signed the final order on December 10, 2007. Appellants filed a motion for new trial on January 8, 2008, and a notice of appeal on February 25, 2008. Appellants subsequently filed in the trial court a motion for reconsideration and a motion pursuant to Rule 306a of the Texas

Rules of Civil Procedure. Appellants alleged in the Rule 306a motion that neither they nor their attorney received notice or acquired actual knowledge of the judgment until January 7, 2008, and sought to extend the beginning of the post-judgment time periods until that date. *See* TEX. R. CIV. P. 306a4, 5; TEX. R. APP. P. 4.2. The trial court denied all of appellants' post-judgment motions.

An appeal from a final order in which termination of the parent-child relationship is in issue is accelerated. TEX. FAM. CODE ANN. § 109.002(a) (Vernon 2002). Accordingly, the notice of appeal was due December 31, 2007, or a motion for extension of time to file the notice of appeal was due January 15, 2008. *See* TEX. R. APP. P. 26.1(b); 26.3. Although appellants filed a timely motion for new trial¹, a timely-filed motion for new trial does not extend the time for filing a notice of appeal in an accelerated appeal. *In re K.A.F.*, 160 S.W.3d 923, 927 (Tex. 2005); TEX. R. APP. P. 28.1(b). Because appellants did not file their notice of appeal within twenty days after the trial court signed the final order and did not file a motion for extension of time under Rule 26.3, their notice of appeal did not invoke this court's jurisdiction. *See K.A.F.*, 160 S.W.3d at 927.²

We therefore dismiss the appeal.

PER CURIAM

¹ Because appellant's motion for new trial was timely filed, we cannot construe the notice of appeal as a notice of restricted appeal. *See* TEX. R. APP. P. 26.1(c); 30.

² Appellants have not sought review of the trial court's order denying their Rule 306a motion. Nevertheless, we note that the notice of appeal filed on February 25, 2008, would not have been timely even if the time for filing the notice of appeal had not begun to run until January 7, 2008, the date appellants allege they learned of the judgment. *See* TEX. R. APP. P. 4.2; 26.1(b).

