

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



MEMORANDUM OPINION

No. 04-10-00528-CV

Richard **PAYNE**,
Appellant

v.

Paul **MORALES**, Thomas S. Hinkle, and Joe A. Shaver,
Appellees

From the 218th Judicial District Court, Karnes County, Texas
Trial Court No. 07-12-00176-CVK
Honorable Ron Carr, Judge Presiding

PER CURIAM

Sitting: Catherine Stone, Chief Justice
Steven C. Hilbig, Justice
Marialyn Barnard, Justice

Delivered and Filed: August 18, 2010

DISMISSED FOR LACK OF JURISDICTION

Richard Payne appeals the trial court's January 27, 2010, judgment dismissing his suit against Warden Paul Morales, Captain Thomas S. Hinkle, and Sergeant Joe A. Shaver. Within thirty days of the judgment, Payne filed a "Motion for Leave to File an Amended Complaint to Include More and Different Facts and For Reconsideration." The motion sought to modify, correct, or reform the judgment and therefore extended the time for perfecting an appeal. *See* TEX. R. CIV. P. 329b(g).

Payne's notice of appeal was therefore due April 27, 2010 (ninety days after the judgment), or a motion for extension of time to file the notice of appeal was due fifteen days later on May 12, 2010. *See* TEX. R. APP. P. 26.1, 26.3. Payne did not file a timely notice of appeal or a motion for extension of time to file the notice of appeal. However, on June 29, 2010, Payne filed a notice of appeal.

We ordered Payne to file a response showing cause why this appeal should not be dismissed for lack of jurisdiction. Payne has filed a response in which he asserts that we failed to consider his motion to file an amended complaint, filed February 5, 2010, and his "Motion to Answer," filed April 12, 2010. We have reviewed both the referenced pleadings. However, neither document can fairly be construed as indicating a desire to appeal the trial court's judgment. *See* TEX. R. APP. P. 25.1. Because Payne failed to timely perfect the appeal, we lack jurisdiction to consider it.

We dismiss the appeal for lack of jurisdiction.

PER CURIAM