

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-13-00471-CV

Zeb Ryan Cummins and Sharon Marie Cummins, Appellants

v.

**Joe Harrison Carr, Donna Leslia Carr, Joe Derek Carr,
and Carmen Marie Cadena, Appellees**

**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 53RD JUDICIAL DISTRICT
NO. D-1-FM-11-001631, HONORABLE GISELA D. TRIANA, JUDGE PRESIDING**

MEMORANDUM OPINION

This appeal arises from a final order in a suit affecting the parent child relationship signed on March 8, 2013. On July 11, 2013, appellants Zeb Ryan Cummins and Sharon Marie Cummins filed their notice of appeal and shortly afterward, a motion to extend time to file notice of appeal. Appellees Joe Harrison Carr and Donna Leslia Carr filed a response in opposition to the motion to extend time and a motion to dismiss the appeal.

The Cumminses argue that their appeal was timely because: (1) they requested findings of fact and conclusions of law on March 27, 2013, and (2) the trial court “retained plenary power to modify its final judgment” by holding a review hearing on May 23, 2013 to revisit the possession schedule and retaining the guardian ad litem for a report, which was not provided until July 22, 2013. Alternatively, the Cumminses request an extension of time to file their notice of appeal to July 11, 2013.

As the Carrs point out, neither holding a review hearing, retaining the guardian ad litem, nor any wording of the trial court's order affected its finality or explicitly extended the court's plenary power beyond the thirty-day period after the date the order was signed. *See* Tex. R. Civ. P. 329b(d). The Cumminses' request for findings of fact and conclusions of law extended their deadline for filing a notice of appeal by 90 days to June 6, 2013. *See* Tex. R. App. P. 26.1(a)(4). That deadline might have been extended to June 21, 2013, if appellants had filed either a notice of appeal with the trial court, or a motion for extension of time with this Court, within 15 days after the deadline for filing the notice of appeal. *See* Tex. R. App. P. 26.3; *Verburgt v. Dorner*, 959 S.W.2d 615, 617-18 (Tex. 1997).

However, the Cumminses' July 11, 2013 notice of appeal is untimely, and we therefore lack jurisdiction over this appeal. *See* Tex. R. App. P. 25.1(b) (providing that filing of notice of appeal invokes appellate court's jurisdiction). Accordingly, we deny the Cumminses' motion to extend time to file notice of appeal, grant the Carrs' motion to dismiss, and dismiss this appeal for want of jurisdiction. *See* Tex. R. App. P. 42.3(a).

Jeff Rose, Justice

Before Justices Puryear, Rose, and Goodwin

Dismissed for Want of Jurisdiction

Filed: August 27, 2013