

NO. 12-08-00347-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

<i>ROY E. ADDICKS, JR., APPELLANT</i>	§	<i>APPEAL FROM THE 369TH</i>
<i>V.</i>	§	<i>JUDICIAL DISTRICT COURT</i>
<i>T.D.C.J.–OFFENDER TRANSPORTATION DEPARTMENT, ET AL, APPELLEES</i>	§	<i>ANDERSON COUNTY, TEXAS</i>

MEMORANDUM OPINION

This appeal is being dismissed for want of jurisdiction pursuant to Texas Rule of Appellate Procedure 42.3(a). The trial court's judgment was signed on April 29, 2008. Under rule of appellate procedure 26.1(b), the notice of appeal must be filed within ninety days after the judgment is signed if any party timely files a motion to modify, correct, or reform the trial court's judgment. TEX. R. APP. P. 26.1(a)(2). Appellant timely filed such a motion. Consequently, his notice of appeal was due to have been filed on or before July 28, 2008. However, Appellant did not file his notice of appeal until August 22, 2008. Moreover, he did not file a motion to extend the time for filing the notice of appeal as permitted by Texas Rule of Appellate Procedure 26.3. Because the notice of appeal was not filed on or before July 28, 2008, it was untimely, and this court has no jurisdiction to consider the appeal.

On August 28, 2008, this court notified Appellant pursuant to Texas Rules of Appellate Procedure 37.1 and 42.3 that his notice of appeal was untimely. The court further informed him that unless the record was amended on or before September 8, 2008 to establish the jurisdiction of this court, the appeal would be dismissed. Appellant responded, asserting that he could not file his notice of appeal earlier because his objections to the trial court's judgment had not been ruled on

by the trial court. The applicable rule of appellate procedure contains no such prerequisite to filing a notice of appeal. *See* TEX. R. APP. P. 26.1(a)(2).

Appellant's notice of appeal was untimely filed, and this court is not authorized to extend the time for perfecting an appeal except as provided by Texas Rules of Appellate Procedure 26.1 and 26.3. Accordingly, the appeal is ***dismissed for want of jurisdiction***. *See* TEX. R. APP. P. 42.3(a). All other pending motions are overruled as moot.

JAMES T. WORTHEN

Chief Justice

Opinion delivered October 8, 2008.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)