

NO. 12-16-00280-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***REBA GUTHRIE, AS
REPRESENTATIVE OF THE ESTATE
OF LA MILLER,
APPELLANT***

§ ***APPEAL FROM THE 7TH***

V.

§ ***JUDICIAL DISTRICT COURT***

***SBC LEASECO BRIARCLIFF, LLC
D/B/A BRIARCLIFF HEALTH
CENTER OF TYLER, TEXAS,
APPELLEE***

§ ***SMITH COUNTY, TEXAS***

***MEMORANDUM OPINION
PER CURIAM***

This appeal is being dismissed for want of jurisdiction. The trial court signed an order of dismissal on May 12, 2016. Appellant timely filed a motion for new trial on June 10, 2016, which was denied by written order on July 14, 2016. She then filed a notice of appeal on October 4, 2016.

Under the rules of appellate procedure, the notice of appeal in a civil case must be filed within thirty days after the judgment is signed. *See* TEX. R. APP. P. 26.1. But because Appellant timely filed a motion for new trial, her notice of appeal was due to have been filed within ninety days after the judgment was signed. *See* TEX. R. APP. P. 26.1(a). Therefore, Appellant's notice of appeal was due to have been filed not later than August 10, 2016. Because the notice of appeal was not filed until October 4, 2016, it was untimely.

A timely notice of appeal must be filed in order to invoke this court's jurisdiction. *See* TEX. R. APP. P. 25.1(b). Consequently, by letter dated October 5, 2016, this Court informed Appellant that the information in this appeal does not show the Court's jurisdiction because her notice of appeal was not timely filed. In response, Appellant explained that her deadline to file

the notice of appeal was October 12, 2016, because the trial court denied her motion for new trial on July 14, 2016. However, the denial of a motion for new trial does not extend the deadline for filing a notice of appeal beyond the time specified in Rule 26.1(a). *See* TEX. R. APP. P. 26.1; ***Garza v. Hibernia Nat'l Bank***, 227 S.W.3d 233, 233 n. 1, 2 (Tex. App.–Houston [1st Dist.] 2007, no pet.).

Because Appellant's notice of appeal was not filed within ninety days after the trial court's dismissal order was signed, we ***dismiss*** the appeal ***for want of jurisdiction***. *See* TEX. R. APP. P. 42.3(a).

Opinion delivered October 21, 2016.

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

(PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

OCTOBER 21, 2016

NO. 12-16-00280-CV

**REBA GUTHRIE, AS REPRESENTATIVE
OF THE ESTATE OF LA MILLER,**

Appellant

V.

**SBC LEASECO BRIARCLIFF, LLC D/B/A
BRIARCLIFF HEALTH CENTER OF TYLER, TEXAS,**

Appellee

Appeal from the 7th District Court
of Smith County, Texas (Tr.Ct.No. 15-2300-A)

THIS CAUSE came to be heard on the appellate record; and the same being considered, it is the opinion of this court that this court is without jurisdiction of the appeal, and that the appeal should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED by this court that this appeal be, and the same is, hereby **dismissed for want of jurisdiction**; and that this decision be certified to the court below for observance.

By *per curiam* opinion.

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