

COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

JOHN H. TRIEN,	§	
Appellant,	§	No. 08-08-00291-CV
v.	§	Appeal from the
	§	205th Judicial District Court
MOUNTAIN PARK COMMUNITY ASSOCIATION AND RICHARD STONE,	§	of El Paso County, Texas
Appellees.	§	(TC# 2008-645)
	§	

MEMORANDUM OPINION

This appeal is before the Court on our own motion for determination whether it should be dismissed for lack of jurisdiction. *See* TEX.R.APP.P. 42.3(a). Finding that the notice of appeal was not timely filed, we will dismiss the appeal.

A civil appeal is perfected when the notice of appeal is filed. TEX.R.APP.P. 26.1; *Restrepo v. First Nat'l Bank of Dona Ana County, N.M.*, 892 S.W.2d 237, 238 (Tex.App.-- El Paso 1995, no writ)(applying former TEX.R.APP.P. 40(a)(1)). When no motion for new trial or request for findings of fact and conclusions of law is filed, the notice of appeal must be filed within thirty days after the judgment is signed. TEX.R.APP.P. 26.1; *Restrepo*, 892 S.W.2d at 238. When a motion for new trial is timely filed, or a party timely files a request for findings of fact and conclusions of law, the notice of appeal is due ninety days after the judgment is signed. *See* TEX.R.APP.P. 26.1(a). An untimely notice of appeal will be considered timely if it is filed within fifteen days after the due date and includes a reasonable explanation for the appellant's failure to

file on the due date. *See* TEX.R.APP.P. 26.3; *Vergburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997).

The judgment in this case was entered on July 23, 2008. Although Appellant filed a motion for new trial on August 25, 2008, it was not timely and therefore did not extend the deadline for the notice of appeal. *See* TEX.R.APP.P. 26.1. Thus, the notice of appeal was due to be filed no later than August 22, 2008. *See id.* Appellant did not file a notice of appeal until October 6, 2008. Therefore, Appellant's notice of appeal was untimely filed. By letter dated October 6, 2008, the clerk of this Court notified Appellant in writing of our intent to dismiss the case for want of jurisdiction because the appeal had not been perfected. *See* TEX.R.APP.P. 42.3(a). Appellant has not responded to the notice. Accordingly, we dismiss the appeal for want of jurisdiction.

November 6, 2008

DAVID WELLINGTON CHEW, Chief Justice

Before Chew, C.J., McClure, and Carr, JJ.