



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

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| JUAN VALLES, | § | No. 08-16-00132-CV |
| | § | |
| Appellant, | § | Appeal from the |
| | § | |
| v. | § | 30th District Court |
| | § | |
| SANDRA BAKER, ALISSA M. | § | of Wichita County, Texas |
| URIBE, AND KIM COLE, | § | |
| | § | (TC# 183,353-A) |
| Appellees. | § | |

MEMORANDUM OPINION

Juan Valles, a Texas inmate, is appealing the trial court's dismissal of his suit. Finding that Valles has not satisfied the jurisdictional requirements for a restricted appeal, we dismiss the appeal for lack of jurisdiction.

Valles filed suit against Sandra Baker, Alissa M. Uribe, and Kim Cole, seeking to recover damages because the prison used a stamp to mark the back of several photos and the ink allegedly damaged them. Appellees moved to dismiss Valles' suit pursuant to Chapter 14 of the Texas Civil Practice and Remedies Code. The trial court granted the motion and dismissed Valles' claims with prejudice on December 7, 2015. On December 28, 2015, Valles timely filed a motion to set aside the dismissal order, but he did not file his notice of appeal until June 6, 2016. Prior to transfer of this case, the Second Court of Appeals sent Valles notice of its intent to dismiss the appeal because he had not filed his notice of appeal by January 6, 2016. Valles

filed a response asserting that he had filed his notice of restricted appeal pursuant to TEX.R.APP.P. 30. The Second Court of Appeals sent a letter to Valles on July 5, 2016 advising him that it had considered his response and would allow the appeal to continue. The case was transferred to this Court two days later.

Appellees argue in their brief that the Court lacks jurisdiction of the appeal because Valles has not established the requirements for a restricted appeal. Rule 30 provides, in pertinent part, that:

A party who did not participate—either in person or through counsel—in the hearing that resulted in the judgment complained of and who did not timely file a postjudgment motion or request for findings of fact and conclusions of law, or a notice of appeal within the time permitted by Rule 26.1(a), may file a notice of appeal within the time permitted by Rule 26.1(c). TEX.R.APP.P. 30.

Thus, to be entitled to a restricted appeal under Rule 30, Valles must establish that (1) he filed notice of the restricted appeal within six months after the judgment was signed, (2) he was a party to the underlying lawsuit, (3) he did not participate in the hearing that resulted in the judgment complained of and did not timely file any post-judgment motions or requests for findings of fact and conclusions of law, and (4) error is apparent on the face of the record. *Alexander v. Lynda's Boutique*, 134 S.W.3d 845, 848 (Tex. 2004); *see* TEX.R.APP.P. 30. These requirements are jurisdictional and will cut off a party's right to seek relief by way of a restricted appeal if they are not met. *Clopton v. Pak*, 66 S.W.3d 513, 515 (Tex.App.--Fort Worth 2001, pet. denied).

The Second Court of Appeals initially concluded that Valles had not timely filed his notice of appeal, but it permitted the appeal to continue after reviewing Valles' response. The court of appeals did not have the benefit of the clerk's record at the time it made these determinations. The clerk's record reflects that Valles timely filed a post-judgment motion on

December 28, 2015 asking the trial court to “void and set aside Judgment.” Consequently, Valles is not entitled to file a notice of restricted appeal under Rule 30. *Laboratory Corporation of America v. Mid-Town Surgical Center, Inc.*, 16 S.W.3d 527, 528-29 (Tex.App.--Dallas 2000, no pet.) (holding that court of appeals lacked jurisdiction over restricted appeal where appellant had timely filed a post-judgment motion). Valles was required to file his notice of appeal within ninety days after the dismissal order was signed. *See* TEX.R.APP.P. 26.1(a). Because Valles filed his notice of appeal long after the deadline, we are required to find that he did not perfect his appeal. The appeal is dismissed for lack of jurisdiction.

GINA M. PALAFOX, Justice

February 24, 2017

Before McClure, C.J., Rodriguez, and Palafox, JJ.