



COURT OF APPEALS  
EIGHTH DISTRICT OF TEXAS  
EL PASO, TEXAS

IN THE MATTER	§	No. 08-16-00261-CV
OF J.J.S.,	§	Appeal from the
A CHILD	§	22nd District Court
	§	of Hays County, Texas
	§	(TC# 10-2304)
	§	

**MEMORANDUM OPINION ON REHEARING**

This is an attempted appeal from an oral order denying a motion to modify child support. The Court issued its opinion and judgment on January 27, 2017 dismissing this appeal for lack of jurisdiction. Appellant, Robert Flores Samaniego, Jr., filed a motion for rehearing. The Court grants Samaniego’s motion for rehearing, withdraws the opinion and judgment issued on January 27, 2017, and substitutes the following opinion in place of the previous one.

In his *pro se* notice of appeal, Samaniego states he is appealing the trial court’s order “given on August 25, 2016 . . . .” We have reviewed the clerk’s record filed on December 29, 2016. It reflects that Samaniego filed separate motions to modify child support and visitation in November 2015, and he filed an amended motion to modify in March 2016. The trial court conducted a hearing on Appellant’s motion to modify child support on August 25, 2016, and it orally denied the motion at the conclusion of the hearing. The trial court has not, however, signed a written

order denying the motion to modify. The Clerk of the Court sent Samaniego a letter notifying him that the Clerk's Record does not contain an appealable order and the appeal would be dismissed for want of jurisdiction unless, within ten days of the notice, he responded and showed grounds for continuing the appeal. Samaniego filed a written response focusing exclusively on the propriety of the transfer of the appeal from the Third Court of Appeals to this Court. He has not presented any evidence that he submitted a proposed written order for the trial court's signature or that the court has refused to sign an order denying the motion to modify.

A written order is necessary for a party to perfect appeal from a trial court's order because the appellate timetable runs from the date the judgment or order is signed. *See* TEX.R.APP.P. 26.1; *Farmer v. Ben E. Keith Co.*, 907 S.W.2d 495, 496 (Tex. 1995). A trial court's oral pronouncement and docket entry are not an acceptable substitute for a written order. *Emerald Oaks Hotel/Conference Center, Inc. v. Zardenetta*, 776 S.W.2d 577, 578 (Tex. 1989)(orig. proceeding); *McCormack v. Guillot*, 597 S.W.2d 345, 346 (Tex. 1980)(orig. proceeding); *see also Five Star Dev. Resort Communities, LLC v. Istar Financial, Inc.*, No. 08-11-00299-CV, 2011 WL 6209366, at \*1 (Tex.App--El Paso Dec. 7, 2011, no pet.)(mem.op.). We dismiss the appeal for lack of jurisdiction. *See* TEX.R.APP.P. 42.3(a).

March 8, 2017

YVONNE T. RODRIGUEZ, Justice

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