



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

FRANCES LEAH HOWE PRIEGEL,	§	No. 08-17-00167-CV
	§	
Appellant,	§	Appeal from the
	§	
v.	§	County Court at Law No. 5
	§	
CHRISTIANA TRUST, A DIVISION	§	of El Paso County, Texas
OF WILMINGTON SAVINGS FUND	§	
SOCIETY, FSB,	§	(TC# 2016DCV1267)
	§	
Appellee.		

MEMORANDUM OPINION

Appellant, Frances Leah Howe Priegel, filed a *pro se* notice of appeal challenging an order of the trial court granting Appellee's application for an expedited order allowing foreclosure under TEX.R.CIV.P. 736. We dismiss the appeal for lack of jurisdiction.

It is well settled that appellate courts have jurisdiction over final judgments and interlocutory orders made appealable by statute. *Lehmann v. Har-Con Corporation*, 39 S.W.3d 191, 195 (Tex. 2001); TEX.CIV.PRAC. & REM.CODE ANN. § 51.014 (West Supp. 2016)(authorizing appeals from certain interlocutory orders).

On May 4, 2017, the trial court signed an order granting Appellee's application for an expedited order allowing foreclosure. Rule 736 provides for an expedited order allowing the foreclosure of a lien listed in Rule 735. TEX.R.CIV.P. 736.1. Appellee filed an application for an expedited order under Rule 736 and the trial court granted it. Rule 736.8(c) provides:

An order granting or denying the application is not subject to a motion for rehearing, new trial, bill of review, or appeal. Any challenge to a Rule 736 order must be made in a suit filed in a separate, independent, original proceeding in a court of competent jurisdiction.

TEX.R.CIV.P. 736.8(c).

Thus, we lack jurisdiction to hear an appeal from the trial court's May 4, 2017 order. The Legislature has determined that Appellant's remedy is to file a separate, independent, original proceeding rather than appeal.

Even if this order was appealable, Appellant did not timely file the notice of appeal. A civil appeal is perfected when the notice of appeal is timely filed. TEX.R.APP.P. 25.1, 26.1; *see Restrepo v. First National Bank of Dona Ana County, N.M.*, 892 S.W.2d 237, 238 (Tex.App.--El Paso 1995, no writ). If the notice of appeal is untimely, the appellate court lacks jurisdiction and must dismiss the case. *See Charette v. Fitzgerald*, 213 S.W.3d 505, 509 (Tex.App.--Houston [14th Dist.] 2006, no pet.). In an ordinary civil case, the notice of appeal must be filed within 30 days after the judgment or appealable order is signed or within 90 days if any party timely files a motion for new trial, motion to modify the judgment, motion to reinstate under TEX.R.CIV.P. 165a, or makes a request for findings of fact and conclusions of law. TEX.R.APP.P. 26.1(a). The appellate court may extend the time to file the notice of appeal if, within fifteen days after the deadline passes, the appellant files (1) the notice of appeal in the trial court and (2) a motion for extension of time complying with Rule 10.5(b). TEX.R.APP.P. 26.3; *see* TEX.R.APP.P. 10.5(b); *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997). On May 4, 2017, the trial court entered an order granting Appellee's application for expedited foreclosure. Thus, the notice of appeal was due to be filed on or before June 3, 2017. Appellant did not file the notice of appeal until July 24, 2017, more than forty-five days after the deadline. Consequently, we lack jurisdiction to consider

Appellant's challenges to the May 4, 2017 order as well as any other matters identified in Appellant's notice of appeal.¹ Accordingly, we dismiss the appeal for lack of jurisdiction.

GINA M. PALAFOX, Justice

August 23, 2017

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

¹ Appellant's twelve-page notice of appeal raises complaints about various aspects of the proceedings conducted in the underlying case, including the trial court's failure to dismiss the case for want of prosecution and failure to find that the proceeding is barred by the statute of limitations.