



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

CITY OF THE COLONY, TEXAS, and THE §
COLONY HOTEL DEVELOPMENT §
CORPORATION, TEXAS, §

Appellants, §

v. §

No. 08-22-00214-CV

KEN PAXTON, ATTORNEY GENERAL §
OF THE STATE OF TEXAS; GLENN §
HEGAR, COMPTROLLER OF PUBLIC §
ACCOUNTS OF THE STATE OF TEXAS, §
ALL TAXPAYERS, PROPERTY OWNERS, §
AND RESIDENTS OF THE CITY OF THE §
COLONY, TEXAS; ALL OTHERS §
HAVING OR CLAIMING ANY RIGHT, §
TITLE, OR INTEREST IN ANY §
PROPERTY OR FUNDS TO BE §
AFFECTED IN ANY WAY BY THE §
PROCEEDINGS INVOLVING THE §
ISSUANCE BY THE CORPORATION OR §
RELATED ENTITIES OF CONVENTION §
CENTER HOTEL REVENUE BONDS, §
INCLUDING ALL ACTIONS AND §
EXPENDITURES OF FUNDS TAKEN OR §
MADE IN CONNECTION THEREWITH §
ET AL., §

Appeal from the
200th Judicial District Court
of Travis County, Texas
(TC# D-1-GN-21-006079)

Appellees. §

MEMORANDUM OPINION

Appellants, City of the Colony, Texas, and The Colony Hotel Development Corporation, Texas, attempt to appeal the trial court’s final judgment in this Expedited Declaratory Judgment Act (“EDJA”) case.¹ *See* TEX.GOV’T CODE ANN. §§ 1205.001 *et seq.* Before the Court is Appellees’ motion to dismiss for lack of jurisdiction, as well as Appellants’ response. For the following reasons, we grant Appellees’ motion.

Following a hearing on the merits, the trial court signed the final judgment on July 1, 2022. Appellants moved to reform, correct, or modify the judgment on August 1, 2022, which was overruled by operation of law. *See* TEX.R.CIV.P. 329b(c). On September 29, 2022, Appellants filed a notice of appeal.

Appellees contend we lack jurisdiction to hear the appeal because Appellants did not meet the jurisdictional deadlines required by EDJA. Section 1205.068 governs EDJA appeals and provides in relevant part:

(a) Any party to an action under this chapter may appeal to the appropriate court of appeals:

- (1) an order entered by the trial court under Section 1205.103 or 1205.104;
or
- (2) the judgment rendered by the trial court.

(b) A party may take a direct appeal to the supreme court as provided by Section 22.001(c).

(e) An appeal under this section is governed by the rules of the supreme court for accelerated appeals in civil cases and takes priority over any other matter, other than writs of habeas corpus, pending in the appellate court. The appellate court shall render its final order or judgment with the least possible delay.

¹ This case was transferred from our sister court in Austin, and we decide it in accordance with the precedent of that court to the extent required by Texas Rule of Appellate Procedure 41.3.

TEX.GOV'T CODE ANN. § 1205.068. Appellees argue Section 1205.068(e) requires EDJA appeals to be accelerated and thus subject to a twenty-day notice-of-appeal deadline that cannot be extended by filing an otherwise deadline-extending pleading, like a motion for new trial or to reform judgment. *See* TEX.R.APP.P. 26.1(b)(“The notice of appeal must be filed within 30 days after the judgment is signed, except . . . in an accelerated appeal, the notice of appeal must be filed within 20 days after the judgment or order is signed[.]”); *id.* 28.1(a)(listing types of accelerated appeals, including “appeals required by statute to be accelerated or expedited”); *id.* 28.1(b)(“Filing a motion for new trial, any other post-trial motion, or a request for findings of fact will not extend the time to perfect an accelerated appeal.”). Thus, they contend this Court has no jurisdiction over the appeal because Appellants’ notice of appeal—filed ninety days after the final judgment was signed—was untimely.

Appellants maintain Section 1205.068(e) gives an EDJA appellant the option to either: (1) appeal directly to the Texas Supreme Court under its rules for accelerated appeals, *i.e.*, Rule 26.1(b), or (2) appeal to the court of appeals under the rules for appeals given precedence or priority by law, which are not accelerated appeals under Rule 26.1(b) and thus not subject to a twenty-day perfection deadline. In other words, Appellants argue Subsection (e) sets out separate rules for two appellate paths, either an accelerated appeal directly to the Texas Supreme Court or a prioritized appeal to the intermediate court of appeals.

However, the plain language of the statute compels otherwise: “An appeal under this section is governed by the rules of the supreme court for accelerated appeals in civil cases *and* takes priority over any other matter, other than writs of habeas corpus, pending in the appellate court.” TEX.GOV'T CODE ANN. § 1205.068(e)[Emphasis added]. Despite Appellants’ contention otherwise, Section 1205.068(e) does not provide “separate rules for two appellate paths” in which

only one is subject to the rules for accelerated appeals—it provides EDJA appeals both are accelerated appeals *and* must be prioritized by the appeals court.² See *In re Commitment of Bluit*, 605 S.W.3d 199, 203 (Tex. 2020)(“[W]hen the statute’s language is unambiguous, we interpret it according to its plain meaning, informed by context and consistent with the statute’s other provisions.”).

Further, Appellants’ argument that any EDJA appellant may chose to appeal directly to the Texas Supreme Court is belied by the second half of Section 1205.068(b): “A party may take a direct appeal to the supreme court *as provided by Section 22.001(c).*” TEX.GOV’T CODE ANN. § 1205.068(b)[Emphasis added]. Section 22.001(c) provides:

Except as provided by this subsection or other law, an appeal may be taken to the supreme court only if the appeal was first brought to the court of appeals. An appeal may be taken directly to the supreme court from an order of a trial court granting or denying an interlocutory or permanent injunction on the ground of the constitutionality of a statute of this state.

Id. § 22.001(c). In other words, an EDJA appellant may appeal directly to the Texas Supreme Court, but only if the appeal arises from a trial court’s order granting or denying an injunction based on the chapter’s constitutionality—which is not the case here. See *Narmah v. Waller Indep. Sch. Dist.*, 257 S.W.3d 267, 272 (Tex.App.—Houston [1st Dist.] 2008, no pet.)(“[T]he declaratory judgment rendered by the trial court may be appealed to either the court of appeals or to the supreme court, *depending on the challenges raised*[.]”[Emphasis added]). Otherwise, the appellate route offered by Section 1205.068 is first to the appropriate court of appeals, then to the Texas Supreme Court. See TEX.GOV’T CODE ANN. §§ 1205.068(a), (d).

² We are also not persuaded by Appellants’ argument the Legislature’s reference to “the rules of the supreme court for accelerated appeals in civil cases” is not sufficiently specific to implicate the Texas Rules of Appellate Procedure—which are, of course, promulgated by the Texas Supreme Court.

Indeed, courts that have considered Section 1205.068 have interpreted its language to mean EDJA appeals are accelerated. *See Burns v. City of San Antonio by & through City Pub. Serv. Bd. of San Antonio*, No. 03-21-00214-CV, 2021 WL 5457049, at *3 (Tex.App.—Austin Nov. 18, 2021, pet. filed)(mem. op.) (“The EDJA provides that appeals under the act are to be ‘governed by the rules of the supreme court for accelerated appeals.’” (quoting TEX.GOV’T CODE ANN. § 1205.068(e))); *In Interest of E.W.N.*, 482 S.W.3d 150, 154–56 (Tex.App.—El Paso 2015, no pet.) (noting appeals from final judgment in EDJA actions are statutorily mandated accelerated appeals)(citing TEX.GOV’T CODE ANN. § 1205.068); *Narmah*, 257 S.W.3d at 272 (noting regardless of whether the trial court’s declaratory judgment is appealed to the court of appeals or the Texas Supreme Court, “the appeal is ‘governed by the rules of the supreme court for accelerated appeals in civil cases and takes priority over any other matter, other than writs of habeas corpus, pending in the appellate court.’” (citing TEX.GOV’T CODE ANN. §§ 1205.068(d), (e))). Accordingly, Appellants were required to file their notice of appeal within twenty days after the trial court signed the final judgment.³ Because they did not file their notice of appeal until September 29, 2022, or ninety days after the entry of final judgment, they did not properly perfect their appeal, and we lack subject-matter jurisdiction. *See In re United Servs. Auto Ass’n*, 307 S.W.3d 299, 307 (Tex. 2010)(orig. proceeding)(explaining timely-notice-of-appeal requirement is jurisdictional). For the above reasons, the motion is GRANTED. We therefore dismiss the appeal for want of jurisdiction.

YVONNE T. RODRIGUEZ, Chief Justice

December 30, 2022

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

³ Appellants also could have sought a fifteen-day extension to the twenty-day deadline by application to the appellate court; however, they did not do so in this case. TEX.R.APP.P. 26.3, 28.1(b).