

Opinion filed January 11, 2018



In The
Eleventh Court of Appeals

No. 11-17-00345-CV

MONTIE PITTS, Appellant

V.

**ARMC, L.P. D/B/A ABILENE REGIONAL MEDICAL CENTER,
Appellee**

**On Appeal from the County Court at Law No. 2
Taylor County, Texas
Trial Court Cause No. 6362**

MEMORANDUM OPINION

Appellant, Montie Pitts, filed a notice of appeal from a default judgment signed by the trial court on October 20, 2017. We dismiss the appeal.

Our records reflect that the motion for new trial and the notice of appeal were filed in the county clerk's office on December 14, 2017, which was fifty-five days after the date that the trial court signed the judgment. The motion for new trial was therefore late. *See* TEX. R. CIV. P. 329b(a). Absent a timely filed motion for new

trial, the notice of appeal¹ was due to be filed on November 20, 2017, thirty days after the judgment was signed or, at the very latest, December 5, 2017, the next business day after a fifteen-day extension. *See* TEX. R. APP. P. 4.1, 26.1, 26.3. Because Appellant did not file a notice of appeal until December 14, 2017, the notice of appeal was untimely. Absent a timely notice of appeal, this court is without jurisdiction to consider this appeal. *See Wilkins v. Methodist Health Care Sys.*, 160 S.W.3d 559, 564 (Tex. 2005); *Garza v. Hibernia Nat'l Bank*, 227 S.W.3d 233 (Tex. App.—Houston [1st Dist.] 2007, no pet.); *see also Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997).

Upon docketing this appeal, the clerk of this court wrote the parties and informed them that the motion for new trial and the notice of appeal appear to have been untimely filed. We requested that Appellant respond on or before December 29, 2017, and show grounds to continue the appeal. *See* TEX. R. APP. P. 42.3. The clerk of this court telephoned Appellant's counsel on January 2, 2018, to inquire about the past due response and was informed that a response would be filed the following day. Appellant still has not filed a response.

Accordingly, we dismiss this appeal. *See* TEX. R. APP. P. 42.3(c).

PER CURIAM

January 11, 2018

Panel consists of: Willson, J.,
Bailey, J., and Wright, S.C.J.²

¹We note that the notice of appeal filed by Appellant was not a notice of restricted appeal. *See* TEX. R. APP. P. 25.1(d)(7).

²Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas, sitting by assignment.