

DISMISS; and Opinion Filed April 27, 2016.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-00151-CV

CORY STONE D/B/A ULTIMATE CHOICE ROOFING & REMODELING, Appellant

V.

SCOTT WIZEMAN AND KIM WIZEMAN, Appellees

**On Appeal from the 192nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-15-08475**

MEMORANDUM OPINION

Before Justices Lang-Miers, Evans, and Brown
Opinion by Justice Brown

Asserting the notice of appeal is untimely, appellees have filed a motion to dismiss the appeal. Appellants have not responded, although more than ten days have passed since the filing of the motion.

The timely filing of a notice of appeal is jurisdictional. *See* TEX. R. APP. P. 25.1(b); *Garza v. Hibernia Nat'l Bank*, 227 S.W.3d 233, 233 (Tex. App.—Houston [1st Dist.] 2007, no pet.). A notice of appeal is timely if filed within thirty days of the signing of the final judgment or, within ninety days of the signing of the final judgment if a motion for new trial, motion to modify judgment, motion to reinstate, or request for findings of fact and conclusions of law is timely filed. *See* TEX. R. APP. P. 26.1(a). These two deadlines may be extended if the notice of appeal is filed within fifteen days of the due date. *See id.* 26.3.

The judgment here was signed October 30, 2015. Appellant filed a timely motion for new trial, making the notice of appeal due on or before January 28, 2016 or, with an extension motion, February 12, 2016. *See id.* 26.1, 26.1(a), 26.3. Appellant, however, filed the notice of appeal February 13, 2016, one day late. Accordingly, it is untimely. We grant appellees' motion and dismiss the appeal for lack of jurisdiction. *See id.* 42.3(a).

/Ada Brown/

ADA BROWN
JUSTICE

160151F.P05



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

CORY STONE D/B/A ULTIMATE
CHOICE ROOFING & REMODELING,
Appellant

No. 05-16-00151-CV V.

SCOTT WIZEMAN AND KIM
WIZEMAN, Appellees

On Appeal from the 192nd Judicial District
Court, Dallas County, Texas
Trial Court Cause No. DC-15-08475.
Opinion delivered by Justice Brown. Justices
Lang-Miers and Evans participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal.

We **ORDER** appellees Scott Wizeman and Kim Wizeman recover their costs, if any, of this appeal from appellant Cory Stone d/b/a Ultimate Choice Roofing & Remodeling.

Judgment entered this 27th day of April, 2016.