

DISMISS and Opinion Filed May 26, 2016.



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

No. 05-16-00420-CV

IN THE BEST INTEREST AND PROTECTION OF K.B.

**On Appeal from the 195th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-1559341**

MEMORANDUM OPINION

Before Chief Justice Wright and Justices Lang-Miers and Stoddart
Opinion by Justice Stoddart

Appellant appeals from the February 4, 2016 judgment of commitment for restoration to competency to stand trial. *See* TEX. CODE CRIM. PROC. ANN. art. 46B.073 (West Supp. 2015). In a letter dated April 26, 2016, the Court questioned its jurisdiction over this appeal because the April 7, 2016 notice of appeal appeared to be untimely. We instructed appellant to file a letter brief addressing the jurisdictional issue and gave appellee an opportunity to respond.

Appeals from civil commitment orders under the code of criminal procedure are to the court of appeals as in the proceedings for court-ordered inpatient mental health services under the health and safety code. *See* TEX. CODE CRIM. PROC. ANN. art. 46B.102(d)(3) (West Supp. 2015). In a civil commitment case, a notice of appeal must be filed not later than the tenth day after the date the order is signed. *See* TEX. HEALTH & SAFETY CODE ANN. § 574.070(b) (West 2010). The deadline for filing the notice of appeal may be extended if, within fifteen days after it is due, the party files the notice of appeal in the trial court and a motion providing a reasonable

explanation for the need for the extension in the appellate court. *See* TEX. R. APP. P.26.3; *In re J.A.*, 53 S.W.3d 869, 871 (Tex. App.—Dallas 2001, no pet.). Without a timely filed notice of appeal, this Court lacks jurisdiction. *See* TEX. R. APP. P. 25.1(b).

In his jurisdictional brief, appellant acknowledges that he failed to properly invoke this Court's jurisdiction because he did not timely file a notice of appeal by Monday, February 15, 2016 or seek to file a late notice of appeal by filing an extension motion no later than March 1, 2016. *See* TEX. HEALTH & SAFETY CODE ANN. § 574.070(b); TEX. R. APP. P. 26.3. He argues, however, that rule 306a(4) of the rules of civil procedure may allow him to invoke this Court's jurisdiction by showing that *he* had no actual knowledge of either the competency hearing or the judgment. Appellant asks that we abate this appeal to allow the trial court to conduct a hearing pursuant to rule 306a.

If a party adversely affected by the judgment or his attorney fails to receive either the notice required by rule 306a(3) or actual knowledge of the judgment within twenty days after the judgment is signed, then appellate deadlines are calculated from the earlier of (1) the date on which the party received notice or (2) the date the party acquired actual knowledge of the signing. TEX. R. APP. P. 306a(4). The record before this Court, however, shows that rule 306a(4) is not applicable to this case.

On November 12, 2015, the trial court appointed counsel for appellant. On defendant's motion, the trial court, on January 13, 2016, ordered that appellant be examined for competency to stand trial. Following the examination, the doctor determined that appellant was not competent to stand trial. The judgment recites that the attorney for appellant and the attorney for the State agreed appellant was incompetent and that no hearing was necessary. The judgment further recites that the parties then agreed to permit the expert's report to be substituted for competent medical or psychiatric testimony on the issue of whether to release appellant on bail

or commit him to a mental health or residential care facility. After considering that evidence, the trial court signed the judgment committing appellant. On this record, counsel for appellant had actual knowledge of the trial court's judgment, thus preventing the application of rule 306a(4).

Counsel for appellant filed a notice of appeal on April 7, 2016, fifty-three days past the deadline. Because the notice of appeal was untimely, we dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a).

/Craig Stoddart/
CRAIG STODDART
JUSTICE

160420F.P05



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

JUDGMENT

IN THE BEST INTEREST AND
PROTECTION OF K.B.

No. 05-16-00420-CV

On Appeal from the 195th Judicial District
Court, Dallas County, Texas.
Trial Court Cause No. F-1559341.
Opinion delivered by Justice Stoddart. Chief
Justice Wright and Justice Lang-Miers
participating.

In accordance with this Court's opinion of this date, the appeal is **DISMISSED**.

Judgment entered this 26th day of May, 2016.