

Dismissed and Opinion Filed May 25, 2016



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

No. 05-16-00499-CV

DAN WYDE, Appellant

V.

JAMES FRANCESCONI AND TATIANNA FRANCESCONI, Appellees

**On Appeal from the 469th Judicial District Court
Collin County, Texas
Trial Court Cause No. 199-50787-2014**

MEMORANDUM OPINION

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

The Court has before it the May 5, 2016 motion to dismiss filed by James Francesconi and Tatianna Francesconi asking this Court to dismiss this appeal for want of jurisdiction. In their motion, the Francesconis state the trial court rendered judgment and signed a final divorce decree on November 10, 2015. They assert no “post-judgment motions were filed by any person or party” and that, as a result, the trial court’s plenary power expired on December 10, 2015. Our records show Dan Wyde filed his notice of appeal April 25, 2016. In addition to an untimely filed notice of appeal, the Francesconis argue Wyde was not a party to the trial court’s judgment and has no standing to file an appeal. Wyde has not responded to the motion.

Rule 26.1 provides that the notice of appeal be filed within 30 days after the judgment is signed. TEX. R. APP. P. 26.1. The time for filing a notice of appeal is extended to 90 days after

the judgment is signed if any party timely files a post-judgment motion that extends the appellate timetable. *Id.*; see *Gene Duke Builders, Inc. v. Abilene Hous. Auth.*, 138 S.W.3d 907, 908 (Tex. 2004).

Here, the trial court signed the final divorce decree November 10, 2015. Assuming no post-judgment orders were filed, the notice of appeal was due December 10, 2015. Even if a timely post-judgment order had been filed and extended the appellate timetable, the time for filing the notice of appeal would have been extended to February 8, 2016. Wyde, however, filed his notice of appeal April 25, 2016. Because he filed his notice of appeal outside the time provided by the rules of appellate procedure, we conclude we lack jurisdiction over this appeal. See TEX. R. APP. P. 25.1(b).

We grant the motion and dismiss this appeal for want of jurisdiction.

/Carolyn Wright/
CAROLYN WRIGHT
CHIEF JUSTICE

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

JUDGMENT

DAN WYDE, Appellant

No. 05-16-00499-CV V.

JAMES FRANCESCONI AND
TATIANNA FRANCESCONI, Appellees

On Appeal from the 469th Judicial District
Court, Collin County, Texas

Trial Court Cause No. 199-50787-2014.

Opinion delivered by Chief Justice Wright,
Justices Lang-Miers and Stoddart
participating.

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

It is **ORDERED** that appellee JAMES FRANCESCONI AND TATIANNA
FRANCESCONI recover their costs, if any, of this appeal from appellant DAN WYDE.

Judgment entered May 25, 2016.