

DISMISS and Opinion Filed September 1, 2016



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

No. 05-16-00666-CV

IN THE INTEREST OF E.J.B., A CHILD

**On Appeal from the 255th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-15-07948**

MEMORANDUM OPINION

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

By letter dated June 27, 2016, the Court questioned its jurisdiction over the appeal because the 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.

If no timely post-judgment motion extending the appellate timetable is filed, a notice of appeal is due thirty days after the date the judgment is signed. *See* TEX. R. APP. P. 26.1. Without a timely filed notice of appeal, this Court lacks jurisdiction. *See* TEX. R. APP. P. 25.1(b).

The trial court signed the judgment on December 7, 2015. Appellant did not file a timely post-judgment motion extending the appellate timetable. Accordingly, the notice of appeal was due on January 6, 2016, thirty days after the date the judgment was signed. *See* TEX. R. APP. P. 26.1. Appellant filed a notice of appeal on May 24, 2016, more than four months past the due date. In his letter brief, appellant informs the Court that he did not learn of the trial court's December 7th judgment until March 11, 2016. *See* TEX. R. APP. P. 306a(4). Neither rule of

civil procedure 306a(4) nor rule of appellate procedure 4.2(a)(1) helps appellant, however, because he concedes that he received actual notice of the judgment on March 11, 2016, which was more than ninety days after the date the judgment was signed. *See* TEX. R. APP. P. 306a(4); TEX. R. APP. P. 4.2(a)(1); *Levit v. Adams*, 850 S.W.2d 469, 470 (Tex. 1993) (per curiam); *Florance v. State*, 352 S.W.3d 867, 873 (Tex. App.—Dallas 2011, no pet.). Moreover, although appellant filed the notice of appeal within six months after the date the judgment was signed, the notice of appeal does not meet the requirements for a restricted appeal. *See* TEX. R. APP. P. 25.1(d)(7).

Because appellant’s notice of appeal was untimely filed, we dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 25.1(b); 42.3(a).

/Carolyn Wright/

CAROLYN WRIGHT
CHIEF JUSTICE

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

JUDGMENT

IN THE INTEREST OF E.J.B., A CHILD

No. 05-16-00666-CV

On Appeal from the 255th Judicial District
Court, Dallas County, Texas
Trial Court Cause No. DF-15-07948.
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 KENDRA NIKOLE BALDWIN recover her costs of this appeal from appellant DANIEL JOSEPH MAVERO.

Judgment entered September 1, 2016.