

DISMISS; and Opinion Filed November 14, 2016.



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

No. 05-16-00981-CV

MATEO SIXTOS, Appellant

V.

**ESPERANZA PARRENO MEJIA, HIPOLITO MEJIA AND RICARDO MEJIA,
Appellees**

**On Appeal from the 192nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-15-01142**

MEMORANDUM OPINION

Before Justices Bridges, Lang-Miers, and Whitehill
Opinion by Justice Lang-Miers

The trial court dismissed appellant's case on March 14, 2016 for want of prosecution. Although due no later than April 13, 2016, appellant filed a motion to reinstate on May 23, 2016, and this appeal followed two months later.

The timely filing of a notice of appeal is jurisdictional. *Garza v. Hibernia Nat'l Bank*, 227 S.W.3d 233, 233 (Tex. App.—Houston [1st Dist.] 2007, no pet.). Generally, a notice of appeal must be filed within thirty days of judgment. *See* TEX. R. APP. P. 26.1. When a motion to reinstate is timely filed, the deadline is extended to ninety days from judgment. *See* TEX. R. APP. P. 26.1(a)(3). Because appellant filed his motion to reinstate untimely, his notice of appeal was due April 13, 2016; however, it was not file stamped until August 16, 2016.

Texas Rule of Civil Procedure 306a(4) and Texas Rule of Appellate Procedure 4.2 provide that, if the party lacks actual knowledge of the signing of a judgment or appealable order, the running of the time for a motion to reinstate begins on the date of actual knowledge, not to exceed ninety days after the original judgment is signed. *See* TEX. R. CIV. P. 306a(4); TEX. R. APP. P. 4.2. In addition, Texas Rule of Civil Procedure 306a(5) requires a party receiving actual knowledge more than twenty days after the signing of the judgment, to establish the date of actual knowledge in the trial court, by motion and with notice. *See* TEX. R. CIV. P. 306a(5). Further, Texas Rule of Appellate Procedure 4.2 requires the trial court to sign a written order finding the date when the party first received notice. *See* TEX. R. APP. P. 4.2(c). The record before this Court does not contain the required motion or order.

Because the record before us does not contain the required motion and finding, the notice of appeal was due on June 13, 2016. *See* TEX. R. APP. P. 26.1. Because appellant's notice of appeal was filed two months later, we lack jurisdiction and dismiss this appeal. *See* TEX. R. APP. P. 42.3(a).

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

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

JUDGMENT

MATEO SIXTOS, Appellant

No. 05-16-00981-CV V.

ESPERANZA PARRENO MEJIA,
HIPOLITO MEJIA AND RICARDO
MEJIA, Appellees

On Appeal from the 192nd Judicial District
Court, Dallas County, Texas

Trial Court Cause No. DC-15-01142.

Opinion delivered by Justice Lang-Miers,
Justices Bridges and Whitehill participating.

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

It is **ORDERED** that appellees Esperanza Parreno Mejia, Hipolito Mejia and Ricardo Mejia recover their costs of this appeal, if any, from appellant Mateo Sixtos.

Judgment entered this 14th day of November, 2016.