

DISMISS; and Opinion Filed February 6, 2017.



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

No. 05-17-00115-CV

LAWRENCE P. PITTS, Appellant

V.

**THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL
ASSOCIATION F/K/A THE BANK OF NEW YORK TRUST COMPANY N.A. AS
SUCCESSOR TO JP MORGAN CHASE BANK, N.A., AS TRUSTEE FOR
RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC., MORTGAGE ASSET-BACKED
PASS-THROUGH, ET AL., Appellees**

**On Appeal from the 116th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-15415**

MEMORANDUM OPINION

Before Justices Francis, Evans, and Whitehill
Opinion by Justice Evans

Before the Court is appellees' motion to dismiss appeal for want of jurisdiction. Appellant's February 1, 2017 notice of appeal states that he is appealing a January 26, 2017 order denying his motion for reconsideration of an order denying his motion for temporary injunction.

An order denying a motion for reconsideration is not independently appealable and, without a final judgment or otherwise appealable order, we may not exercise appellate jurisdiction. TEX. CIV. PRAC. & REM. CODE § 51.014; *Macklin v. SAIA Motor Freight Lines, Inc.*, No. 06-12-00038-CV, 2012 Tex. App. LEXIS 2748, at *1-2, 2012 WL 1155141 (Tex. App.—Texarkana Apr. 6, 2012, no pet.) (mem. op.) (dismissing appeal for want of jurisdiction

because “order denying a motion for reconsideration or motion for new trial is not a judgment, and is not independently appealable”). We, therefore, do not have jurisdiction over this appeal to the extent appellant appeals the denial of his motion for reconsideration.

We also do not have jurisdiction over an appeal of the December 19, 2016 order denying the motion for temporary injunction because appellant’s notice of appeal was untimely. An order denying a temporary injunction is subject to an interlocutory appeal. TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4). Interlocutory appeals are accelerated. TEX. R. APP. P. 28.1. Here, the deadline to appeal ran from the date the trial court denied the temporary injunction, not from the denial of the motion for reconsideration. *See Hartford Ins. Group v. Perez*, No. 05-11-00195-CV, 2011 WL 2306800, at *1 (Tex. App.—Dallas June 13, 2011, no pet.) (mem. op.) (citing *Weik v. Second Baptist Church of Houston*, 988 S.W.2d 437, 438 (Tex. App.—Houston [1st Dist.] 1999, pet. denied)). Moreover, filing a motion for new trial, any other post-trial motion, or a request for findings of fact does not extend the time to perfect an accelerated appeal. TEX. R. APP. P. 28.1(b); *In re K.A.F.*, 160 S.W.3d 923, 927 (Tex. 2005) (“absent a rule 26.3 motion, the deadline for filing a notice of appeal is strictly set at twenty days after the judgment is signed, with no exceptions, and filing a rule 26.1(a) motion . . . will not extend that deadline”). Appellant’s notice of appeal from the December 19, 2016 order was due to be filed no later than Monday, January 9, 2017. TEX. R. APP. P. 26.1(b); TEX. R. APP. P. 4.1(a). An appellate court is authorized to extend the time to file the notice of appeal, but the appellant must file the notice of appeal within 15 days after the deadline. TEX. R. APP. P. 26.3. Appellant did not file his notice of appeal until February 1, 2017, more than 15 days after the deadline, and did not seek an extension of time to file the notice of appeal. Because Appellant did not file his notice of appeal or a motion for extension of time within the time specified by the rules of appellate procedure,

this Court does not have jurisdiction over an appeal of the December 19, 2016 order denying the motion for temporary injunction

Accordingly, we grant appellees' motion to dismiss the appeal and dismiss this proceeding. We also deny as moot appellant's February 3, 2017 emergency motion for temporary restraining order and preliminary injunction and appellant's February 6, 2017 emergency motion for stay of proceedings. We order appellant to bear the costs, if any, of this appeal.

/David Evans/
DAVID EVANS
JUSTICE

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

JUDGMENT

LAWRENCE P. PITTS, Appellant

No. 05-17-00115-CV V.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, NATIONAL
ASSOCIATION F/K/A THE BANK OF
NEW YORK TRUST COMPANY N.A. AS
SUCCESSOR TO JP MORGAN CHASE
BANK, N.A., AS TRUSTEE FOR
RESIDENTIAL ASSET MORTGAGE
PRODUCTS, INC., MORTGAGE ASSET-
BACKED PASS-THROUGH, ET AL.,
Appellees

On Appeal from the 116th Judicial District
Court, Dallas County, Texas

Trial Court Cause No. DC-16-15415.

Opinion delivered by Justice Evans. Justices
Francis and Whitehill participating.

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

It is **ORDERED** that appellees THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION F/K/A THE BANK OF NEW YORK TRUST COMPANY N.A. AS SUCCESSOR TO JP MORGAN CHASE BANK, N.A., AS TRUSTEE FOR RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC., MORTGAGE ASSET-BACKED PASS-THROUGH, ET AL. recover their costs of this appeal from appellant LAWRENCE P. PITTS.

Judgment entered this 6th day of February, 2017.