

Dismissed and Opinion Filed November 7, 2017



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-01011-CV

JULIAN ROSS, Appellant

V.

**SPERO HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY, AND
DANIEL JAMES MANAGEMENT, INC., A NEVADA CORPORATION, Appellees**

**On Appeal from the 296th Judicial District Court
Collin County, Texas
Trial Court Cause No. 296-04473-2016**

MEMORANDUM OPINION

Before Justices Lang, Evans, and Schenck
Opinion by Justice Evans

This appeal was filed August 25, 2017, almost six months after the trial court signed the challenged judgment. The appeal was filed as a restricted appeal, with appellant stating he “did not timely file a request for findings of fact and conclusions of law, and all the requirements of Texas Rule of Appellate Procedure 25.1 generally and 25.1(d) specifically are met in this case or are otherwise satisfied by this notice of appeal.” *See* TEX. RS. APP. P. 25.1, 30. As it pertains to restricted appeals, rule 25.1(d) requires in relevant part that the notice of appeal state appellant did not timely file either a post-judgment motion or request for findings of fact and conclusions of law. *See id.* 25.1(d)(7)(B).

The clerk’s record in the appeal reflects appellant timely filed a post-judgment motion for new trial. Noting this, appellees have moved to dismiss the appeal for want of jurisdiction.

Appellant has filed a response, asserting two main arguments. First, he asserts appellate rule 2 allows the Court to suspend the requirement in rule 25.1(d) that to be entitled to a restricted appeal appellant must not have filed a timely motion for new trial. *See* TEX. R. APP. P. 2 (authorizing court of appeals to suspend rule “to expedite a decision or for other good cause”). Second, he asserts the Court “has jurisdiction under a Bill of Review standard.” Neither of these arguments has merit. Rule 2 does not authorize a court to exercise jurisdiction where none exists, and a bill of review is a trial court proceeding that must be filed in the court that rendered the original judgment. *See Frost Nat’l Bank. v. Fernandez*, 315 S.W.3d 494, 504 (Tex. 2010) (bill of review); *Tejas Elevator Co. v. Concord Elevator, Inc.*, 982 S.W.2d 578, 579 (Tex. App.—Dallas 1998, no pet.) (rule 2).

Because appellant filed a **timely** motion for new trial, he is precluded from filing a restricted appeal. *See Lab Corp. of Am. v. Mid-Town Surgical Ctr., Inc.*, 16 S.W.3d 527, 528 (Tex. App.—Dallas 2000, no pet.). Accordingly, we grant appellees’ motion and dismiss the appeal. *See* TEX. R. APP. P. 42.3(a).

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/David W. Evans/

DAVID EVANS
JUSTICE



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

JUDGMENT

JULIAN ROSS, Appellant

No. 05-17-01011-CV V.

SPERO HOLDINGS, LLC, A NEVADA
LIMITED LIABILITY COMPANY, AND
DANIEL JAMES MANAGEMENT, INC.,
A NEVADA CORPORATION, Appellees

On Appeal from the 296th Judicial District
Court, Collin County, Texas
Trial Court Cause No. 296-04473-2016.
Opinion delivered by Justice Evans. Justices
Lang and Schenck participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal.

We **ORDER** appellees Spero Holdings, LLC, A Nevada Limited Liability Company, and Daniel James Management Inc., a Nevada Corporation, recover their costs, if any, of this appeal from appellant Julian Ross.

Judgment entered this 7th day of November, 2017.