

Dismissed and Opinion Filed March 19, 2018



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-01241-CV

IN RE JOHN S. SMALE, DECEASED

On Appeal from the Probate Court No. 2
Dallas County, Texas
Trial Court Cause No. PR-14-01527-2

MEMORANDUM OPINION
Before Justices Bridges, Evans, and Whitehill
Opinion by Justice Bridges

By notice of appeal filed October 16, 2017, Brian A. Smale attempts to appeal the trial court’s July 28, 2017 order denying a tertiary recusal motion and the “lack of response by Supreme Court of Texas Chief Justice Nathan Hecht” to a request to “assign another judge to hear [certain motions].” We questioned our jurisdiction over the complaint concerning Chief Justice Hecht as the Court does not have jurisdiction over Texas Supreme Court justices. *See generally* TEX. GOV’T CODE ANN. § 22.220 (West Supp. 2017). We also questioned our jurisdiction over the order denying the recusal motion as it appeared the appeal was filed untimely. *Brashear v. Victoria Gardens of McKinney, L.L.C.*, 302 S.W.3d 542, 545 (Tex. App.–Dallas 2009, no pet.) (op. on reh’g) (timely filing of notice of appeal is jurisdictional). Specifically, an appeal from an order denying a tertiary recusal motion is only reviewable on appeal from a final judgment. *See* TEX. GOV’T CODE ANN. § 25.00256(d) (West Supp. 2017). The record before us reflects the final

judgment in the underlying case was signed on June 29, 2017. Because no timely extension motion, motion for new trial or to modify judgement, or request for findings of fact and conclusions of law was filed, the notice of appeal was due no later than July 31, 2017. *See* TEX. R. APP. P. 26.1, 26.3.

At our request, Smale filed a letter brief addressing our concerns. However, the letter brief fails to demonstrate our jurisdiction over the appeal. Accordingly, we dismiss the appeal. *See id.* 42.3(a).

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

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

JUDGMENT

IN RE JOHN S. SMALE, DECEASED,
Appellant

No. 05-17-01241-CV

On Appeal from the Probate Court No. 2,
Dallas County, Texas
Trial Court Cause No. PR-14-01527-2.
Opinion delivered by Justice Bridges,
Justices Evans and Whitehill participating.

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

We **ORDER** appellee Pamela Smale Williams recover her costs, if any, of this appeal from appellant Brian A. Smale.

Judgment entered March 19, 2018.