

Dismissed and Opinion Filed May 15, 2018



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

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No. 05-18-00267-CV

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**JULIAN ROSS, Appellant**

**V.**

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

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

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**MEMORANDUM OPINION**

Before Chief Justice Wright, Justice Evans, and Justice Brown  
Opinion by Chief Justice Wright

By letter dated March 28, 2018, the Court questioned its jurisdiction over this appeal as the notice of appeal appeared to be untimely. At our request, the parties filed letter briefs addressing our concern. We now dismiss this appeal for want of jurisdiction.

Appellees filed suit against appellant Julian Ross and Oxysure Therapeutics, Inc. Oxysure Therapeutics subsequently filed a petition in bankruptcy. Appellees obtained a default judgment against Ross only and then nonsuited their claims against Oxysure Therapeutics. On March 14, 2017, the trial court signed a final judgment conforming appellees' default judgment against appellant and dismissing their claims against Oxysure Therapeutics. Nearly six months later, appellant filed a notice of restricted appeal. We dismissed that appeal because appellant had filed a timely motion for new trial. *See Ross v. Spero Holdings, LLC*, 05-17-01011-CV, 2017 WL

5167284, at \*1 (Tex. App.—Dallas Nov. 7, 2017, no pet.). Appellant then filed a motion in the trial court requesting a hearing on his motion for new trial. On February 14, 2018, the trial court signed an order denying appellant’s motion because its plenary jurisdiction had expired.

On March 8, 2018, appellant filed a notice of appeal seeking to appeal the trial court’s February 14, 2018 order as well as its March 14, 2017 final judgment. We subsequently notified the parties we questioned our jurisdiction over the appeal. We explained that, as a general rule, there can only be one final judgment in a case. See TEX. R. CIV. P. 301; *Icon Benefit Administrators II, L.P. v. Mullin*, 405 S.W.3d 257, 261 (Tex. App.—Dallas 2013, no pet.). Because the trial court signed the final judgment on March 14, 2017, appellant’s March 8, 2018 notice of appeal appeared to be untimely.

In his response, appellant asserts we have jurisdiction over this appeal because the trial court’s judgment is void. Notwithstanding this argument, even void judgments must be timely appealed. *Brashear v. Victoria Gardens of McKinney, L.L.C.*, 302 S.W.3d 542, 546 (Tex. App.—Dallas 2009, no pet.). A party cannot attack a void judgment in an untimely appeal. See *Kenseth v. Dallas Cnty.*, 126 S.W.3d 584, 596–97 (Tex. App.—Dallas 2004, pet. denied) (rejecting argument that void order can be challenged by untimely direct appeal).

Without discussing this Court’s precedent, appellant contends the Texas Supreme Court has held a “final” judgment rendered in violation of a bankruptcy stay cannot operate as a “final appealable order.” Appellant cites *Hood v. Amarillo Nat’l Bank*, 815 S.W.2d 545, 546 (Tex. 1991) to support this assertion. In *Hood*, the trial court signed a judgment after one of the defendants filed for bankruptcy and while the bankruptcy stay was in effect. *Id.* The Supreme Court held that judgment was not “final and appealable,” but not because it was rendered in violation of the bankruptcy stay. Rather, the Supreme Court held the trial court’s judgment was not final and

appealable because the trial court did not purport to dispose of the plaintiff's claims against the debtor. *See id* at 546-47. Thus, *Hood* does not support appellant's assertion.

To invoke this Court's jurisdiction, a party must file a timely notice of appeal. *See* TEX. R. APP. P. 25.1(b); *Harris v. HSBC Bank*, 369 S.W.3d 917, 918 (Tex. App.—Dallas 2012, no pet.). Because the trial court's March 14, 2017 judgment purported to dispose of all parties and claims, it was a final judgment, regardless of whether it was void. *See Brashear*, 302 S.W.3d at 546 (concluding appellant was required to timely appeal judgment entered during automatic bankruptcy stay). Because appellant filed a timely motion for new trial, his notice of appeal was due no later than June 12, 2017, ninety days after the trial court signed the judgment. *See* TEX. R. APP. P. 26.1(a)(1). Appellant did not file his notice of appeal until March 8, 2018. Accordingly, we dismiss this appeal for want of jurisdiction.

/Carolyn Wright/  
CAROLYN WRIGHT  
CHIEF JUSTICE

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

**JUDGMENT**

JULIAN ROSS, Appellant

No. 05-18-00267-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 Chief Justice Wright.  
Justices Evans and Brown participating.

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

It is **ORDERED** that appellees SPERO HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY, AND DANIEL JAMES MANAGEMENT, INC., A NEVADA CORPORATION recover their costs of this appeal from appellant JULIAN ROSS.

Judgment entered May 15, 2018.