

Dismissed and Opinion Filed April 19, 2018.



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00347-CV

ALEJANDRO TUNCHEZ, Appellant
V.
ELIZABETH VARGAS TUNCHEZ, Appellee

On Appeal from the 229th Judicial District Court
Duval County, Texas
Trial Court Cause No. DC-15-367

MEMORANDUM OPINION

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

Before the Court is appellant's March 9, 2018 notice of appeal or alternative motion for extension of time to file notice of appeal ("extension motion").¹ Because the notice of appeal was neither timely filed nor filed within the extension period allowed by the rules of appellate procedure, we deny the motion and dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a); *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 notice of appeal is jurisdictional).

The extension motion recites the appeal is from the trial court's denial of appellant's motion for new trial and is based on the date the motion for new trial was denied, or alternatively,

¹ This appeal was transferred from the Fourth Court of Appeals to this Court by the Texas Supreme Court pursuant to its docket equalization order. TEX. GOV'T CODE ANN. § 73.001 (West 2013).

the date the motion for new trial was filed.² The operative date for determining the timeliness of an appeal, however, is the date of judgment, not the date the motion for new trial was filed or denied. See TEX. R. APP. P. 26.1; *State Office of Risk Mgmt. v. Bearden*, 335 S.W.3d 421, 428 (Tex. App.—Corpus Christi 2011, pet. denied).

Under rule of appellate procedure 26.1, a notice of appeal must be filed within thirty days of the date of judgment. TEX. R. APP. P. 26.1. When a motion for new trial is timely filed, that is, when it is filed within thirty days of the date of judgment, the notice of appeal must be filed within ninety days of the judgment. *Id.* 26.1(a); TEX. R. CIV. P. 329b(a). The deadlines for filing the notice of appeal can be extended if the notice of appeal is filed within fifteen days of the applicable deadline and an extension motion reasonably explaining the need for the extension is also filed. See TEX. R. APP. P. 10.5(b), 26.3; *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997).

The record here reflects the judgment was signed June 23, 2017 and the motion for new trial was filed October 25, 2017. Because appellant did not file his motion for new trial within thirty days of the judgment, the deadline for filing the notice of appeal was July 24, 2017, or with an extension motion, August 8, 2017. See TEX. R. APP. P. 4.1, 26.1(a), 26.3. Having been filed March 9, 2018, the notice of appeal is untimely. Accordingly, we deny the extension motion and dismiss the appeal. See *id.* 42.3(a).

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/David Evans/

DAVID EVANS
JUSTICE

² The motion for new trial was heard November 29, 2017. Appellant asserts in the extension motion that the motion for new trial was overruled by operation of law seventy-five days after it was heard. However, the clerk's record reflects the trial court signed a written order denying the motion for new trial November 30, 2017.



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

JUDGMENT

ALEJANDRO TUNCHEZ, Appellant

No. 05-18-00347-CV V.

ELIZABETH VARGAS TUNCHEZ,
Appellee

On Appeal from the 229th Judicial District
Court, Duval County, Texas
Trial Court Cause No. DC-15-367.
Opinion delivered by Justice Evans,
Justices Bridges and Whitehill
participating.

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

We **ORDER** appellee Elizabeth Vargas Tunchez recover her costs, if any, of this appeal from appellant Alejandro Tunchez.

Judgment entered this 19th day of April, 2018.