

DISMISS and Opinion Filed July 24, 2018



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

No. 05-18-00414-CV

IN THE INTEREST OF S.E.M., A CHILD

**On Appeal from the 254th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-17-05078**

MEMORANDUM OPINION

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

The Court questioned its jurisdiction over this appeal as it appeared the notice of appeal was untimely. We instructed appellant to file a letter brief addressing the jurisdictional issue. Appellant filed a letter brief but wholly failed to address the timeliness issue.

The trial court signed the judgment on December 13, 2017. Appellant filed a motion to set aside default judgment and for new trial on February 12, 2018. Because this motion was filed more than 30 days after the judgment, it was untimely and did not extend the time to file a notice of appeal. *See* TEX. R. CIV. P. 329b(a) (motion for new trial must be filed within 30 days after the judgment is signed).

Without a timely post-judgment motion extending the appellate timetable, a notice of appeal is due within 30 days after the judgment is signed. *See* TEX. R. APP. P. 26.1. Accordingly, the notice of appeal was due on January 12, 2018. Appellant filed a notice of appeal on April 9, 2018. We note that in his notice of appeal, appellant states he is appealing the trial court's

“judgment entered by the court on March 8, 2018.” The trial court signed the order denying appellant’s untimely motion for new trial on that date. The deadline for filing a notice of appeal, however, runs from the date of judgment. *See* TEX. R. APP. P. 26.1. As mentioned above, appellant filed a letter brief but wholly failed to address the timeliness of the notice of appeal.

Because appellant failed to timely file a notice of appeal, this Court lacks jurisdiction. *See* TEX. R. APP. P. 25.1(b). Accordingly, we dismiss the appeal. *See* TEX. R. APP. P. 42.3(a).

/Carolyn Wright/
CAROLYN WRIGHT
CHIEF JUSTICE

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

JUDGMENT

IN THE INTEREST OF S.E.M., A CHILD

No. 05-18-00414-CV

On Appeal from the 254th Judicial District
Court, Dallas County, Texas

Trial Court Cause No. DF-17-05078.

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**.

It is **ORDERED** that appellee Judith McDuffie recover her costs of this appeal from appellant Robert McDuffie.

Judgment entered July 24, 2018_.