

**DISMISS and Opinion Filed November 10, 2020**



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

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**No. 05-20-00444-CV**

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**VP MEDIA SYSTEMS, INC. AND ROBERT COURNOYER, Appellants  
V.  
BLU HAWK ENTERPRISES, LLC, Appellee**

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**On Appeal from the 298th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-19-10958**

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**MEMORANDUM OPINION**

Before Justices Whitehill, Pedersen, III, and Reichek  
Opinion by Justice Whitehill

VP Media Systems, Inc. and Robert Cournoyer (collectively appellants) appeal from a foreign judgment filed in the trial court by appellee Blu Hawk Enterprises, LLC. (Blu Hawk). We questioned our jurisdiction over this appeal because it appeared appellants' notice of appeal was untimely. At our request, the parties filed letter briefs addressing our concern.

The filing of a foreign judgment has the effect of initiating an enforcement proceeding and instantly becomes a final judgment. *See Moncrief v. Harvey*, 805 S.W.2d 20, 23 (Tex. App.—Dallas 1991, no pet.). Any motion to contest the

recognition of a foreign judgment filed within thirty days after the foreign judgment is filed operates as a motion for new trial. *See id.* When a timely post-judgment motion extending the appellate timetable is filed, a notice of appeal is due ninety days or, with an extension motion, 105 days after the date the judgment is signed. *See* TEX. R. APP. P. 26.1(a); 26.3. Without a timely filed notice of appeal, this Court lacks jurisdiction. *See 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).

Blu Hawk filed the foreign judgment on August 5, 2019. Appellants filed a timely motion to vacate on September 3, 2019<sup>1</sup> which acted as a timely motion for new trial. *See Moncrief*, 805 S.W.2d at 23. Thus, the notice of appeal was due on November 4, 2019 or, with an extension motion, November 19, 2019. *See* TEX. R. APP. P. 4.1(a), 26.1(a), 26.3. Appellants filed a notice of appeal on April 8, 2020. In their notice of appeal, appellants state they are appealing the final judgment “dated January 10, 2020.” The order signed on January 10th denied appellants’ motion to vacate the foreign judgment. As noted above, the motion to vacate served as a motion for new trial. An order denying a motion for new trial is not appealable. *See*

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<sup>1</sup> The motion to vacate addressed both the August 5, 2019 filing of the foreign judgment and the August 20, 2019 order granting appellee’s motion for entry of an order recognizing domestication of the foreign judgment.

*In re B.L.R.*, 592 S.W.3d 453, 462-63 (Tex. App.—Houston [1st Dist.] 2018, no pet.) (order denying motion for new trial not independently appealable).

In their letter brief, appellants assert that they were never served with citation following the filing of the foreign judgment. *See* TEX. R. CIV. P. 99(b).<sup>2</sup> Rule 99 concerns service of citation when a plaintiff initiates a lawsuit. *See id.* Blu Hawk did not initiate a new lawsuit. *See Cantu v. Howard S. Grossman, P.A.*, 251 S.W.3d 731, 746 (Tex. App.—Houston [14th Dist.] 2008, pet. denied) (dissenting op. by J. Frost) (Uniform Enforcement of Foreign Judgments Act provides speedy alternative to filing lawsuit to enforce judgment of sister state). Rather, it filed a foreign judgment pursuant to the Uniform Enforcement of Foreign Judgments Act (UEFJA). *See* TEX. CIV. PRAC. & REM. CODE ANN. § 35.003; *see also Cantu*, 251 S.W.3d at 746-49 (dissenting op. by J. Frost) (noting procedural rules applicable to new lawsuits not applicable to enforcement proceedings brought under UEFJA). Moreover, even if the filing of the foreign judgment constituted a new lawsuit, the alleged failure of service does not make the January order denying appellants' motion to vacate the final order.

Blu Hawk filed the foreign judgment in accordance with the UEFJA. Appellants timely moved to vacate the foreign judgment, thereby extending the time to file a notice of appeal to November 4, 2019. Appellants' notice of appeal filed on

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<sup>2</sup> Appellants' citation to rule of civil procedure 109 appears to be an error.

April 8, 2020 is untimely. Accordingly, we dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a).

/Bill Whitehill/  
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BILL WHITEHILL  
JUSTICE

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

**JUDGMENT**

VP MEDIA SYSTEMS, INC. AND  
ROBERT COURNOYER,  
Appellants

No. 05-20-00444-CV        V.

BLU HAWK ENTERPRISES, LLC,  
Appellee

On Appeal from the 298th Judicial  
District Court, Dallas County, Texas  
Trial Court Cause No. DC-19-10958.  
Opinion delivered by Justice  
Whitehill. Justices Pedersen, III and  
Reichek participating.

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

It is **ORDERED** that appellee BLU HAWK ENTERPRISES, LLC recover  
its costs of this appeal from appellants VP MEDIA SYSTEMS, INC. AND  
ROBERT COURNOYER.

Judgment entered November 10, 2020