

Dismissed and Opinion Filed January 22, 2021



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-20-01099-CV

GWENDOLYN GABRIEL, Appellant
V.
MERRY OUTLAW, Appellee

On Appeal from the 116th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-17-17712

MEMORANDUM OPINION

Before Justices Molberg, Goldstein, and Smith
Opinion by Justice Molberg

This appeal from the trial court’s October 26, 2020 orders granting appellee’s summary judgment motions was untimely filed. Asserting health issues and the need to file “ethical and criminal complaints” prevented her from filing the notice of appeal on time, appellant has filed a motion to extend time to file the notice of appeal. Appellee has responded with a motion to dismiss the appeal for want of jurisdiction. *See Brashear v. Victoria Gardens of McKinney, L.L.C.*, 302 S.W.3d 542, 55 (Tex. App.—Dallas 2009, no pet.) (op. on reh’g) (timely filing of notice of appeal is jurisdictional). Appellee notes that, under the applicable rule for perfecting appeal, the notice of appeal was due November 25, 2020 or, with an extension

motion, December 10, 2020. *See* TEX. R. APP. P. 26.1 (notice of appeal due within thirty days after judgment signed unless certain post-judgment motions or request for findings of fact and conclusions of law are filed); 26.3 (providing that, upon motion, appellate court may extend time to file notice of appeal if notice is filed within fifteen days of deadline). Appellant, however, did not file the notice of appeal until December 18, 2020.

A motion for extension of time is proper only when the notice of appeal is filed within the extension period. *See id.* 26.3. Because the notice of appeal here was filed outside the extension period, we deny appellant’s extension motion without regard to the merits, grant appellee’s motion to dismiss, and dismiss the appeal. *See id.* 42.3(a); *Brashear*, 302 S.W.3d at 545.

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/Ken Molberg//
KEN MOLBERG
JUSTICE



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

JUDGMENT

GWENDOLYN GABRIEL,
Appellant

No. 05-20-01099-CV V.

MERRY OUTLAW, Appellee

On Appeal from the 116th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-17-17712.
Opinion delivered by Justice
Molberg, Justices Goldstein and
Smith participating.

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

We **ORDER** that appellee Merry Outlaw recover her costs, if any, of this appeal from appellant Gwendolyn Gabriel.

Judgment entered this 22nd day of January, 2021.