

DISMISS and Opinion Filed April 8, 2021



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

No. 05-21-00135-CV

ALFRED LEE STONE, Appellant

V.

**DONNELL PORTER AKA DONALD PORTER, EDDIE BYRD, LEOLA
REDMOND, MARILYN BYRD, MAXINE BYRD, HATTIE BYRD, AND
LUVENIA ROBINSON BUTLER, Appellees**

**On Appeal from the 68th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-20-08985**

MEMORANDUM OPINION

Before Chief Justice Burns, Justice Molberg, and Justice Goldstein
Opinion by Chief Justice Burns

This appeal challenges the trial court's order dismissing the underlying case. For the reasons that follow, we dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a).

The underlying case was filed by appellees against appellant and a third party in July 2020 and dismissed for want of prosecution on December 19, 2020. No motion to reinstate or other plenary-power-extending motion was filed. On February 3, 2021, on appellees' motion, a default judgment was rendered against the third

party. The trial court also vacated the dismissal order. The appeal was filed a month later, on March 3.

Generally, an appeal must be filed within thirty days of judgment, and no more than one final judgment may be rendered in any cause. *See* TEX. R. APP. P. 26.1 (setting deadline for perfecting appeal); TEX. R. CIV. P. 301 (concerning judgments). The final judgment here was the order of dismissal, and the notice of appeal was due no later than January 19. *See* TEX. R. APP. P. 4.1(a), 26.1. Although the order of dismissal was vacated by the trial court and a default judgment signed, the trial court's actions were void because they were taken outside the court's plenary power. *See State ex rel. Latty v. Owens*, 907 S.W.2d 484, 486 (Tex. 1995) (per curiam). A trial court has plenary power to vacate a judgment for thirty days after a judgment is signed or, with a timely filed motion to reinstate, motion to modify, or motion for new trial, thirty days after such motions are overruled by written order or operation of law, whichever occurs first. *See* TEX. R. CIV. P. 329b(d),(e); *In re Gen. Motors Corp.*, 296 S.W.3d 813, 821 (Tex. App.—Austin 2009, orig. proceeding). Here, no such motion was filed.

On March 12, we notified the parties of our concern. We directed appellant to file a letter brief and cautioned that failure to comply by March 22, 2021 could result in dismissal of the appeal without further notice. *See* TEX. R. APP. P. 42.3(a),(c).

Rather than filing a letter brief, appellant filed a motion to dismiss the appeal as to appellee Donnell Porter. The motion, however, does not address the Court’s jurisdictional concerns even as to Porter. Accordingly, because the record before us reflects the notice of appeal was untimely filed, we dismiss the appeal. *See id.*; *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).

/Robert D. Burns, III/
ROBERT D. BURNS, III
CHIEF JUSTICE

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

JUDGMENT

ALFRED LEE STONE, Appellant

No. 05-21-00135-CV V.

DONNELL PORTER A/K/A
DONALD PORTER, EDDIE BYRD,
LEOLA REDMOND, MARILYN
BYRD, MAXINE BYRD, HATTIE
BYRD, AND LUVENIA
ROBINSON BUTLER, Appellees

On Appeal from the 68th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-20-08985.
Opinion delivered by Chief Justice
Burns, Justices Molberg and
Goldstein participating.

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

Judgment entered April 8, 2021.