

DISMISS and Opinion Filed November 16, 2021



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

No. 05-21-00394-CV

**JEFFERY PAUL WALTON, Appellant
V.
KAY FRANCES WALTON, Appellee**

**On Appeal from the 303rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. CV-20-00449**

MEMORANDUM OPINION

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

Appellant appeals from the trial court's December 8, 2020 protective order. At a May 17 hearing on appellant's statement of inability to pay costs, the trial court announced that it would appoint counsel to represent appellant on appeal. Appointed counsel filed a notice of appeal on May 27, over four months after the January 7 deadline. *See* TEX. R. APP. P. 26.1. Recognizing the notice of appeal was untimely, counsel filed a jurisdictional statement asking this Court to find that appellant's Statement of Inability to Afford Payment of Court Costs or an Appeal Bond

(“Statement of Inability”) postmarked on January 6, 2021 and filed on January 12, 2021¹ sufficient to invoke our jurisdiction.

An appeal is perfected when a written notice of appeal is filed with the trial court clerk. *See* TEX. R. APP. P. 25.1(a). An affidavit of indigence is not an instrument used to invoke an appellate court’s jurisdiction. *See In re Lynd*, No. 05-11-01280-CV, 2012 WL 6177024, at *1 (Tex. App.—Dallas Dec. 10, 2012, no pet.). Under former Rule 41(a)(1) of the Texas Rules of Appellate Procedure, an affidavit of indigence was a perfecting instrument. *See Jones v. City of Houston*, 976 S.W.2d 676, 677 (Tex. 1998). That rule was repealed in 1997. *See* 49 TEX. B.J. at 565, 566 (repealed 1997) (current versions at TEX. R. APP. P. 25.1, 26.1).

Because appellant’s Statement of Inability is not a perfecting instrument, we deny appellant’s request and dismiss the appeal for want of jurisdiction. *See* Tex. R. APP. P. 25.1(a), 42.3(a); *Lynd*, 2012 WL 6177024, at *1.

210394f.p05

/Ken Molberg//
KEN MOLBERG
JUSTICE

¹ Under the prisoner mailbox rule, if a pro se inmate timely delivers a document to prison authorities for forwarding to the court clerk, the document is deemed filed when placed with prison officials for mailing. *See Campbell v. State*, 320 S.W.3d 338, 344 (Tex. Crim. App. 2010).



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

JUDGMENT

JEFFERY PAUL WALTON,
Appellant

No. 05-21-00394-CV V.

KAY FRANCES WALTON,
Appellee

On Appeal from the 303rd Judicial
District Court, Dallas County, Texas
Trial Court Cause No. CV-20-00449.
Opinion delivered by Justice
Molberg. Justices Goldstein and
Smith participating.

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

Judgment entered this 16th day of November, 2021.