

DISMISS and Opinion Filed December 13, 2021



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

No. 05-21-00821-CV

**FREDERICK ALTYMAN BROWN (JR.), Appellant
V.
JOE JORDAN TRUCKS, INC., Appellee**

**On Appeal from the 191st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-19-20105**

MEMORANDUM OPINION

Before Justices Reichek, Nowell, and Carlyle
Opinion by Justice Reichek

The deadline for filing this appeal, from the trial court's March 25, 2021 summary judgment, was June 23, 2021 or, with an extension motion, July 8, 2021. *See* TEX. R. APP. P. 26.1(a)(1). The notice of appeal was not filed, however, until September 21, 2021.

Because the timely filing of a notice of appeal is jurisdictional, we questioned our jurisdiction over the appeal and directed appellant to file a letter brief addressing our concern. *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). Appellant complied, seemingly relying, in relevant part, on the tolling of deadlines in the Texas Supreme

Court's emergency Covid-19 orders.¹ As appellee notes in response, however, appellant did not separately request an extension of time to file the notice of appeal. *See* TEX. R. APP. P. 26.3. And, while an extension request can be implied when the notice of appeal is filed within the extension period, we cannot imply an extension request when, as here, the notice of appeal is filed outside the extension period. *See Naaman v. Grider*, 126 S.W.3d 73, 74 (Tex. 2003) (per curiam); *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997). Accordingly, on the record before us, we dismiss the appeal. *See* TEX. R. APP. P. 42.3(a).

/Amanda L. Reichek/

AMANDA L. REICHEK
JUSTICE

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¹ Although appellant's letter brief appears to address only the merits of his appeal, the letter states it is in response to our request for jurisdictional briefing. Accordingly, we have liberally construed the brief as also addressing the timeliness of the appeal.



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

JUDGMENT

FREDERICK ALTYMAN BROWN
(JR.), Appellant

No. 05-21-00821-CV V.

JOE JORDAN TRUCKS, INC.,
Appellee

On Appeal from the 191st Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-19-20105.

Opinion delivered by Justice
Reichek, Justices Nowell and Carlyle
participating.

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

We **ORDER** that appellee Joe Jordan Trucks, Inc. recover its costs, if any, of this appeal from appellant Frederick Altyman Brown (Jr.).

Judgment entered December 13, 2021.