

Opinion issued December 11, 2008



In The
Court of Appeals
For The
First District of Texas

NO. 01-08-00440-CV

DAVID JAMES, Appellant

V.

METROPOLITAN TRANSIT AUTHORITY, Appellee

**On Appeal from the 281st District Court of
Harris County, Texas
Trial Court Cause No. 2006-10152**

MEMORANDUM OPINION

David James appeals the trial court's dismissal for want of prosecution of his personal injury case against the Metropolitan Transit Authority (MTA). James

did not timely file his notice of appeal, and therefore we dismiss the appeal for want of jurisdiction.

Analysis

The trial court signed its final judgment on May 24, 2007. James did not file any motion that would extend the deadline for filing his notice of appeal. *See* TEX. R. APP. P. 26.1(a); 26.3. Therefore, James's notice of appeal was due to be filed by June 23, 2007. *See* TEX. R. APP. P. 26.1. James did not file a notice of appeal until May 1, 2008, almost one year later. The Clerk of this court advised James of this, and requested him to respond, by a date certain, explaining the jurisdictional basis for this appeal.

In his response, James contends that the trial court clerk did not notify him of the trial court's May 24, 2007 judgment. James asserts that he timely filed the notice of appeal because he did so within 30 days of his April 10, 2008 discovery, from an MTA representative, that the trial court had dismissed the case almost a year earlier. As authority that this court has jurisdiction, appellant cites *Knight v. Schofield*, 292 F.3d 709, 711 (11th Cir. Ga. 2002) and Texas Rule of Civil Procedure 306a.

Knight is inapplicable to the instant case as it addresses the tolling of the period for filing an application for habeas corpus relief under 28 U.S.C., section 2254, the Antiterrorism and Effective Death Penalty Act (AEDPA), when a state

court has not informed an inmate of the denial of his request for relief from the state courts. *Knight*, 292 F.3d at 710-11. It does not address whether, in a civil case, this court has jurisdiction to consider an appeal in which the notice of appeal has been filed nearly a year after entry of a final judgment.

Similarly, Texas Rule of Civil Procedure 306a does not authorize this court to consider appellant's attempted, untimely appeal. Rule 306a provides a procedure for a party, whom the trial court clerk fails to notify of a final judgment within 20 days after it is signed, to seek to extend the appellate timetable. TEX. R. CIV. P. 306a(4),(5). To do so, however, the affected party must prove the actual date he received notice of the judgment in a hearing before the trial court. TEX. R. CIV. P. 306a(5). In his response to this court, James did not demonstrate that he has done this. Further, Rule 306a(4) places a limit on such extensions providing that "in no event shall such [extension of the appellate timetable] begin more than 90 days after the original judgment or other appealable order was signed."¹

¹ Appellant cites numerous other legal authorities that are inapplicable to this case: *Bay v. Mecom*, 393 S.W.2d 819, 820 (Tex. 1965)(holding no dismissal of an otherwise perfected appeal when the transcript included unrelated matters); *Pratley v. Sherwin-Williams Co. of Texas*, 36 S.W.2d 195, 197-98 (Tex. Crim. App. 1931) (holding failure of the court to prepare a statement of facts is error which extends time); *McMurrin v. State*, 239 S.W.2d 632, 635 (Tex. Crim. App. 1951)(regarding alleged error in using peremptory challenges to organize jury by race); *State v. Blankenship*, 123 S.W.3d 99, 102 (Tex. App.—Austin 2003, *rev'd and remanded* 146 S.W.3d 218) (examining the State's limited right to appeal in a criminal case); *Stine v. State*, 935 S.W.2d 443, 445 (Tex. App.—Waco 1996, *pet. ref'd*) (holding verdict on lesser included offense constituted an implied acquittal of greater offense so that

Accordingly, we lack jurisdiction to consider the appeal. *See Franklin v. Park*, No. 14-98-00436-CV, 1999 Tex. App. LEXIS 1459 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (mem. op.) (dismissing appeal for want of jurisdiction on holding that notice of appeal was untimely filed because it was filed more than one year after final judgment); TEX. R. APP. P. 4.2(a)(1).

Conclusion

We dismiss the appeal for want of jurisdiction. TEX. R. APP. P. 42.3(a). Any pending motions are likewise dismissed for want of jurisdiction.

Jane Bland
Justice

Panel consists of Justices Jennings, Hanks, and Bland.

when lesser included offense was reversed on appeal, double jeopardy precluded retrial on the greater offense); *Owens-Corning Fiberglas Corp. v. Wasiak*, 883 S.W.2d 402, 409 (Tex. App.—Austin 1994, no pet.) (regarding a court signing orders after plenary power had expired); *Walker v. Sinclair Prairie Oil Co.*, 166 S.W.2d 383, 385 (Tex. Civ. App.—Fort Worth 1942, writ ref'd w.o.m.) (holding that collateral attacks may not be made under the guise of probate cases).