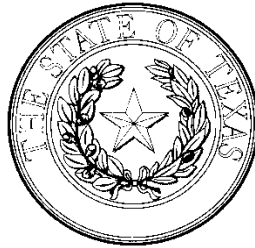


Opinion issued March 31, 2011



**In The
Court of Appeals
For The
First District of Texas**

NO. 01-10-00609-CV

**SIMON CASTRO, Appellant
V.
SHELL OIL COMPANY, Appellee**

**On Appeal from the 113th District Court
Harris County, Texas
Trial Court Case No. 2005-44225**

MEMORANDUM OPINION

Appellant Simon Castro appeals the trial court's denial of his "Motion for Relief from Judgment." We conclude the appeal is untimely and, thus, dismiss for lack of jurisdiction.

BACKGROUND

Castro, a former employee of Appellee Shell Oil Company, sued Shell alleging employment discrimination. Following a jury trial on the merits, the jury returned a defense verdict. On January 9, 2008, the trial court entered judgment for Shell on the jury's verdict, ordering that Castro take nothing.

On December 4, 2008, Castro filed a "Motion for Relief from Judgment," citing Federal Rule of Civil Procedure 60(b), which permits a court to "relieve a party . . . from a final judgment" on certain grounds, including fraud, misrepresentation, or misconduct by an opposing party. In this motion, Castro alleged that his attorney and Shell's attorney "engaged in a scheme which was designed to improperly influence the court in its decision." Specifically, Castro contended that his attorney did not present his case effectively at trial because Shell's counsel allegedly promised to help Castro's attorney's son find a job. On June 23, 2010, the trial court signed an order denying Castro's motion. On July 23, 2010, Castro filed a notice of appeal from the trial court's June 23, 2010 order.

Castro argues on appeal that the trial court abused its discretion by denying his motion. In response, Shell denies Castro's allegations of improper collusion by the parties' trial attorneys and asserts that, in any event, Castro's motion was not timely.

JURISDICTION

Although Castro's motion cites Federal Rule of Civil Procedure 60, that rule does not apply in Texas state court, and there is no corresponding Texas Rule of Civil Procedure entitled "Relief from a Judgment or Order." "When a party has mistakenly designated any plea or pleading, the court, if justice so requires, shall treat the plea or pleading as if it had been properly designated." TEX. R. CIV. P. 71. "We look to the substance of a motion to determine the relief sought, not merely to its title." *Surgitek, Bristol-Myers Corp. v. Abel*, 997 S.W.2d 598, 601 (Tex. 1999); *see also In re Bokeloh*, 21 S.W.3d 784, 789 (Tex. App.—Houston [14th Dist.] 2000, no pet.) ("[W]e recognize that the substance of a motion, not its title, determines the relief sought.").

We interpret Castro's motion as a motion for new trial because it complains about the attorneys' methods of presenting evidence at trial and requests relief from the trial court's final judgment. TEX. R. CIV. P. 320. "[M]otions for new trial and motions to modify, correct, or reform judgment . . . shall be filed prior to or within thirty days after the judgment or other order complained of is signed." TEX. R. CIV. P. 329b(a). Castro's motion, filed nearly a year after the trial court's judgment was entered, was untimely. If no timely motion for new trial is filed, the trial court's plenary power to grant a new trial or to modify, correct, or reform the judgment expires thirty days after the judgment is signed. TEX. R. CIV. P. 329b(d).

The trial court’s order denying Castro’s untimely motion for new trial is void, *In re Brookshire Grocery Co.*, 250 S.W.3d 66, 72 (Tex. 2008) (orig. proceeding), and presents nothing for appellate review. *See Moritz v. Preiss*, 121 S.W.3d 715, 720 (Tex. 2003).

Absent the filing of a timely post-trial motion effectively extending the time for perfecting an appeal, a notice of appeal must be filed “within 30 days after the judgment is signed.” TEX. R. APP. P. 26.1. A timely filed notice of appeal is required to invoke this Court’s jurisdiction. TEX. R. APP. P. 25.1(b). Castro’s notice of appeal—filed two and one-half years after the final judgment was signed—was untimely.

CONCLUSION

We dismiss the appeal for lack of jurisdiction.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Alcala and Bland.