

Opinion issued May 20, 2014.



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

NO. 01-14-00029-CV

**GREGORY RAY WHEELER, Appellant
V.
JALANE SUZETTE THEIS, Appellee**

**On Appeal from the 308th District Court
Harris County, Texas
Trial Court Case No. 2013-18731**

MEMORANDUM OPINION

Appellant, Gregory Ray Wheeler, attempts to appeal from a final decree of divorce signed on September 24, 2013. Wheeler has filed a “Motion to Extend the Appellate Deadline.” Appellee, Jalane Suzette Theis, has filed a motion to dismiss

the appeal for want of jurisdiction. We deny Wheeler's motion, grant Theis's motion, and dismiss the appeal.

Generally, a notice of appeal is due within thirty days after the judgment is signed. *See* TEX. R. APP. P. 26.1. The deadline to file a notice of appeal is extended to ninety days after the date the judgment is signed if any party timely files a motion for new trial, motion to modify the judgment, motion to reinstate, or, under certain circumstances, a request for findings of fact and conclusions of law. *See* TEX. R. APP. P. 26.1(a); *see also* TEX. R. CIV. P. 297, 329b(a), (g). The time to file a notice of appeal also may be extended if, within fifteen days after the deadline to file the notice of appeal, a party properly files a motion for extension. *See* TEX. R. APP. P. 10.5(b), 26.3; *see also Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997) (holding that motion for extension of time is implied when appellant, acting in good faith, files notice of appeal beyond Rule 26.1 deadline but within Rule 26.3 fifteen-day extension period).

Here, the trial court signed the final judgment on September 24, 2013. Wheeler timely filed a motion for new trial and a request for findings of fact and conclusions of law. Accordingly, his notice of appeal was due on December 23, 2013, or by January 7, 2014, with a fifteen-day extension. *See* TEX. R. APP. P. 26.1(a), 26.3; *Verburgt*, 959 S.W.2d at 617.

Wheeler untimely filed a “Motion to Extend Appellate Deadline,” requesting an extension of time to file his notice of appeal on January 9, 2014. Because Wheeler’s motion to extend the deadline to file his notice of appeal was untimely filed, the motion cannot extend the deadline. *See* TEX. R. APP. P. 26.3. Wheeler’s notice of appeal, electronically filed on January 8, 2014, was untimely. Without a timely filed notice of appeal, this Court lacks jurisdiction over the appeal. *See* TEX. R. APP. P. 25.1.

Accordingly, we deny Wheeler’s motion, grant Theis’s motion, and dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a), 43.2(f). We dismiss any other pending motions as moot.

PER CURIAM

Panel consists of Justices Keyes, Sharp, and Huddle.