

Opinion issued February 22, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-17-00962-CV

ARTHUR P. HOLDING, Appellant
V.
BLACKBURNE & BROWN, Appellee

On Appeal from the 11th District Court
Harris County, Texas
Trial Court Cause No. 2016-12403

MEMORANDUM OPINION

Appellant, Arthur P. Holding, attempts to appeal from both the trial court's November 16, 2017 order denying his motion for new trial and the August 24, 2017 agreed final judgment. We dismiss the appeal for want of jurisdiction.

Generally, a notice of appeal is due within thirty days after the final judgment is signed, but the deadline to file a notice of appeal is extended to ninety days after the date the judgment is signed if, within thirty days after the judgment is signed, any party timely files a post-judgment motion. *See* TEX. R. APP. P. 26.1(a); TEX. R. CIV. P. 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 in this Court. *See* TEX. R. APP. P. 10.5(b), 26.3; *Verburgt v. Dorner*, 959 S.W.2d 615, 617–18 (Tex. 1997) (holding motion for extension of time is necessarily implied when appellant, acting in good faith, files notice of appeal beyond time allowed by Rule 26.1, but within fifteen-day extension period under Rule 26.3). Even with an implied extension the appellant must, however, offer a reasonable explanation in this Court for failing to timely file the notice of appeal. *See* TEX. R. APP. P. 10.5(b)(1)(C), (b)(2)(A), 26.3(b); *Hone v. Hanafin*, 104 S.W.3d 884, 886-87 (Tex. 2003).

Here, the letter of assignment indicates that appellant timely filed a motion for new trial on September 25, 2017, within thirty days of the August 24, 2017 judgment. *See* TEX. R. CIV. P. 329b(a); TEX. R. APP. P. 4.1(a). Although appellant’s notice of appeal claims to be appealing from both the judgment and the November 16, 2017 order denying the motion for new trial, “[a]n order denying a motion for new trial is not independently appealable.” *Fletcher v. Ahrabi*, No. 01-12-00794-

CV, 2012 WL 6082915, at *1 (Tex. App.—Houston [1st Dist.] Dec. 6, 2012, no pet.) (per curiam) (mem. op.) (citation omitted). “Unless a statute authorizes an interlocutory appeal, appellate courts generally only have jurisdiction over final judgments.” *CMH Homes v. Perez*, 340 S.W.3d 444, 447 (Tex. 2011).

Thus, the deadline to file the notice of appeal did not run from the date of the order denying the motion for new trial, but from the date the trial court signed the judgment on August 24, 2017. *See* TEX. R. APP. P. 26.1(a)(1); *Mulhall v. Anderson*, No. 01-16-00067-CV, 2016 WL 6087691, at *1 (Tex. App.—Houston [1st Dist.] Oct. 18, 2016, no pet.) (per curiam) (mem. op.) (citations omitted). Appellant’s motion for new trial only extended his deadline for filing his notice of appeal for ninety days after the August 24, 2017 judgment was signed, or November 22, 2017, or with the 15-day grace period by December 7th. *See* TEX. R. APP. P. 26.1(a)(1), 26.3. Appellant’s appeal was filed on December 14, 2017.

This Court’s January 30, 2018 Order and Notice of Intent to Dismiss for Want of Jurisdiction notified appellant that his appeal was subject to dismissal for want of jurisdiction unless he filed a written response showing how this Court has jurisdiction. *See* TEX. R. APP. P. 42.3(a). Appellant filed a response conceding that his “Notice of Appeal was untimely filed by one week” on December 14, 2017. But appellant contends that the late filing was an “inadvertent mistake” because his “reliance on the outcome of the Motion for New Trial and further mistaken reliance

on the 30 days subsequent to the denial of the MNT explains the late filing,” which he claims invoked this Court’s jurisdiction.¹

However, as noted above, appellant’s deadline to file his notice of appeal did not run thirty days from the date of the order denying the motion for new trial, but ninety days from the August 24, 2017 final judgment. *See Mulhall*, 2016 WL 6087691, at *1 (citations omitted). Once the fifteen-day extension period for filing a notice of appeal passed without filing a notice of appeal, a party can no longer invoke this Court’s jurisdiction and no extension can be implied. *See Naaman v. Grider*, 126 S.W.3d 73, 74 (Tex. 2003) (citing *Verburgt*, 959 S.W.2d at 615).

Appellant’s notice of appeal, filed on December 14, 2017, was untimely. Without a timely filed notice of appeal, this Court can take no action other than to dismiss this appeal for want of jurisdiction. *See* TEX. R. APP. P. 25.1, 26.1(a)(1), 26.3(b); 26.3(b); *Verburgt*, 959 S.W.2d at 617–18; *see also Cartmill v. Cartmill*, No. 14-06-00583-CV, 2006 WL 2164721, at *1 (Tex. App.—Houston [14th Dist.] Aug. 3, 2006, pet. denied) (per curiam) (mem. op.).

Accordingly, we dismiss this appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a), 43.2(f). We dismiss any pending motions as moot.

PER CURIAM

Panel consists of Justices Jennings, Keyes, and Higley.

¹ On February 20, 2018, appellee filed a response in opposition to appellant’s response.