

Opinion issued December 11, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-18-00799-CV

DONALD DANKOWICH AND CARMINES LLC, Appellants
V.
R-1 MANAGEMENT, LLC, Appellee

**On Appeal from the 458th District Court
Fort Bend County, Texas
Trial Court Case No. 17-DCV-238384**

MEMORANDUM OPINION

In the underlying proceeding, the trial court signed a final judgment on January 8, 2018 in favor of appellee R-1 Management, LLC and against appellants, Donald Dankowich and Carmines LLC. On September 6, 2018, appellants filed a

“notice of appeal of the judgment dated July 10, 2018.”¹ The trial court clerk sent a copy of the notice of appeal to this Court, and the Clerk of this Court docketed the appeal. *See* TEX. R. APP. P. 12.1, 25.1(a), (f).

We dismiss the appeal for want of jurisdiction.

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, within thirty days after the judgment is signed, 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); TEX. R. CIV. P. 296, 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. A motion for extension of time is necessarily implied when an appellant, acting in good faith, files a notice of appeal beyond the time allowed by rule 26.1, but within the fifteen-day extension

¹ Appellants filed an earlier notice of appeal, and the Clerk of this Court docketed the appeal in No. 01-18-00321-CV. *See* TEX. R. APP. P. 12.1. On July 10, 2018, we dismissed that appeal for nonpayment of required fees and want of prosecution. *See Carmine’s LLC v. RI Mgm’t, LLC*, No. 01-18-00321-CV, 2018 WL 3353293, at *1 (Tex. App.—Houston [1st Dist.] July 10, 2018, pet. filed). To any extent that appellants’ notice of appeal, filed on September 6, 2018, sought review of this Court’s judgment, the Clerk of this Court forwarded a copy of the notice of appeal to the Clerk of the Supreme Court of Texas. *See* TEX. R. APP. P. 53.1, 53.7.

period provided by rule 26.3. *See* TEX. R. APP. P. 26.1, 26.3; *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997).

Here, the trial court signed the final judgment on January 8, 2018. The record filed in this Court does not include a timely filed motion for new trial, motion to modify the judgment, motion to reinstate, or a request for findings of fact and conclusions of law. A notice of appeal, therefore, was due by February 7, 2018, or by February 22, 2018, with a fifteen-day extension. *See* TEX. R. APP. P. 26.1(b), 26.3. Appellants' notice of appeal filed on September 6, 2018 was untimely to perfect an appeal of the January 8, 2018 final judgment to this Court. Without a timely filed notice of appeal, this Court lacks jurisdiction over the appeal. *See* TEX. R. APP. P. 25.1; *Brown Mech. Servs., Inc. v. Mountbatten Sur. Co.*, 377 S.W.3d 40, 44 (Tex. App.—Houston [1st Dist.] 2012, no pet.).

The Clerk of this Court notified appellants that the appeal was subject to dismissal for lack of jurisdiction unless they filed a response showing how this Court has jurisdiction over the appeal. Appellants did not respond.

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

PER CURIAM

Panel consists of Justices Higley, Lloyd, and Caughey.