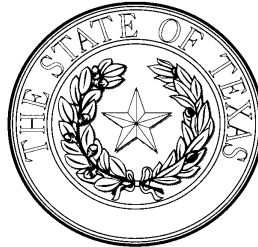


Opinion issued June 8, 2021



In The
Court of Appeals
For The
First District of Texas

NO. 01-20-00532-CV

LARRY D. FORD, Appellant

V.

MEMORIAL HERMANN GREATER HEIGHTS HOSPITAL, Appellee

**On Appeal from the 334th District Court
Harris County, Texas
Trial Court Case No. 2019-31512**

MEMORANDUM OPINION

Appellant, Larry D. Ford, filed a notice of appeal on July 24, 2020 attempting to appeal the trial court's final order signed on February 7, 2020 granting appellee's motion to dismiss the underlying suit because Ford failed to file a Chapter 74 expert

report.¹ Appellee has filed a motion to dismiss the appeal for want of jurisdiction because Ford's notice of appeal was untimely. We grant the motion and dismiss the appeal.

Absent a timely filed notice of appeal, an appellate court lacks jurisdiction over the appeal. TEX. R. APP. P. 25.1; *In re United Services Auto. Ass'n*, 307 S.W.3d 299, 307 (Tex. 2010). 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. 329b(a), (g). The time to file a notice of appeal may also 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 period provided by Rule 26.3. *See* TEX. R. APP. P. 26.1, 26.3; *Verburgt v. Dorner*, 959 S.W.2d 615, 617–18 (Tex. 1997).

¹ *See* TEX. CIV. PRAC. & REM. CODE § 74.351.

Here, the trial court signed the order from which Ford attempts to appeal on February 7, 2020. Ford filed a timely motion for new trial on February 12, 2020, which extended the deadline for filing a notice of appeal to ninety days from the judgment.² See TEX. R. APP. P. 26.1(a). Therefore, Ford’s deadline to file his notice of appeal was May 7, 2020. See *id.*

Ford’s notice of appeal was untimely filed on July 24, 2020, seventy-eight days after the Rule 26.1 deadline and well past the fifteen-day period in which Rule 26.3 authorizes us to grant an extension. Once the period for granting a motion for extension of time under Rule 26.3 has passed, a party can no longer invoke the appellate court’s jurisdiction. See *Verburgt*, 959 S.W.2d at 617; *Brown Mech. Servs., Inc. v. Mountbatten Sur. Co.*, 377 S.W.3d 40, 44 (Tex. App.—Houston [1st Dist.] 2012, no pet.). Without a timely filed notice of appeal, this Court lacks jurisdiction over the appeal. See TEX. R. APP. P. 25.1.

On August 28, 2020, appellee filed a motion to dismiss this appeal for want of jurisdiction due to the untimely notice of appeal. Ford failed to file an adequate response demonstrating our jurisdiction over the appeal.³ Accordingly, we grant

² Ford’s motion for new trial was denied on April 27, 2020.

³ Ford’s response argues that his untimely notice of appeal should be allowed because his failure to file by the deadline was “inadvertent” and cases should not be decided on “technicalities.” But the requirement of a timely notice of appeal is not a technicality, it is prerequisite for our jurisdiction. Nor are we at liberty to extend the notice of appeal deadline other than as provided in the appellate rules. See TEX. R. APP. P. 2 (stating that appellate courts may

appellee's motion to 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 Kelly, Landau, and Hightower.

suspend rule's operation in particular case but may not "alter the time for perfecting an appeal in a civil case").