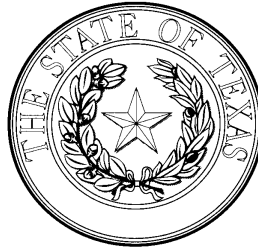


Opinion issued June 8, 2021



In The
Court of Appeals
For The
First District of Texas

NO. 01-20-00533-CV

LARRY D. FORD, Appellant

V.

IBRAHIM GARCIA-MOWATT, JR. M.D., Appellee

**On Appeal from the 151st District Court
Harris County, Texas
Trial Court Case No. 2019-31528**

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 January 9, 2020 granting appellee's motion to dismiss the underlying suit because Ford failed to file a Chapter 74 expert

report.¹ Appellee’s brief argues that our Court must dismiss the appeal for want of jurisdiction because Ford’s notice of appeal was untimely. We agree.

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).

Here, the trial court signed the order from which Ford attempts to appeal on January 9, 2020. On March 12, 2020, Ford filed a “Motion for Trial Setting

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

Preference Jones Act Preferential Trial Setting.” Although Ford’s motion was entitled “Motion for Trial Setting Preference,” the motion included a request that the January 9, 2020 judgment be set aside. Ford subsequently filed a Motion to Set Aside Judgment on June 29, 2020 that was followed by another Motion to Set Aside Judgment on July 13, 2020.

Even considering the earliest of these post-trial motions—Ford’s March 12, 2020 Motion for Trial Setting Preference—as a motion for new trial, the motion was untimely. Motions for new trial are timely if filed within thirty days after the complained-of judgment or order is signed. TEX. R. CIV. P. 329b(a). Under this rule, Ford’s deadline for filing a motion for new trial was February 10, 2020. *See* TEX. R. CIV. P. 4; TEX. R. CIV. P. 329b(a). Because Ford’s motion for new trial was not timely, the motion did not extend the deadline for filing his notice of appeal.² *See* TEX. R. APP. P. 26.1(a) (providing that timely filed motion for new trial extends time for filing notice of appeal). Therefore, Ford’s deadline to file his notice of appeal was February 10, 2020. *See* TEX. R. APP. P. 26.1.

Ford’s notice of appeal was untimely filed on July 24, 2020, over five months after the Rule 26.1 deadline and well past the fifteen-day period in which Rule 26.3

² Ford’s appellate brief includes a Request for Rehearing and Motion for New Trial that he allegedly filed on February 12, 2020. That motion, however, is from a different case — specifically, Ford’s separate suit against Memorial Hermann Hospital (Northwest Heights) in the 334th District Court (Trial Court Case No. 2019-31512).

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.

Accordingly, we dismiss the 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 Kelly, Landau, and Hightower.