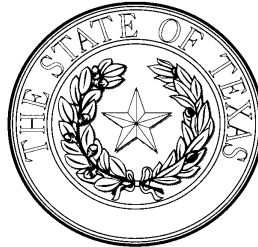


Opinion issued June 8, 2021



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

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NO. 01-20-00538-CV

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**LARRY D. FORD, Appellant**

**V.**

**CARLOS REYNALDO HERRERA, M.D., Appellee**

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**On Appeal from the 189th District Court  
Harris County, Texas  
Trial Court Case No. 2019-33393**

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**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 December 9, 2019 granting appellee's motion to dismiss the underlying suit because Ford failed to file a Chapter 74 expert

report.<sup>1</sup> 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 December 9, 2019. On March 5, 2020, Ford filed a “Motion for Trial Setting

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<sup>1</sup> *See* TEX. CIV. PRAC. & REM. CODE § 74.351.

Preference Jones Act Preferential Trial Setting.” On March 11, 2020, Ford filed a second “Motion for Trial Setting Preference Jones Act Preferential Trial Setting.” Although Ford’s motions were entitled “Motion for Trial Setting Preference,” both motions included a request that the December 9, 2019 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 5, 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 January 8, 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. *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 January 8, 2020. *See* TEX. R. APP. P. 26.1.

Ford’s notice of appeal was untimely filed on July 24, 2020, over six months 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.

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.