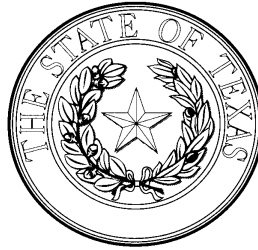


**Opinion issued June 8, 2021**



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

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**NO. 01-20-00543-CV**

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**LARRY D. FORD, Appellant  
V.  
CAMILLO PROPERTIES, Appellee**

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**On Appeal from the 334th District Court  
Harris County, Texas  
Trial Court Case No. 2019-68695**

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**MEMORANDUM OPINION**

Appellant, Larry D. Ford, filed a notice of appeal on July 25, 2020 attempting to appeal the trial court's final judgment signed on February 7, 2020. 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.

## **Background**

On December 13, 2019, the trial court issued an interlocutory order granting appellee's Texas Citizen Participation Act motion to dismiss Ford's suit against appellee. On February 7, 2020, the trial court signed an Order Awarding Attorney's Fees and Sanctions Under the Texas Citizen Participation Act, which awarded attorney's fees and noted that the "order, along with the Court's December 13, 2019 Order Granting Defendant's, Camillo Properties, Motion to Dismiss Pursuant to the Texas Citizen's Participation Act, collectively, constitute a final, appealable judgment and disposes of all parties and claims." Accordingly, the final judgment in the case was signed on February 7, 2020.

On March 14, 2020, Ford filed a "Motion for Trial Setting Preference Jones Act Preferential Trial Setting." Although Ford's motion was entitled "Motion for Trial Setting Preference" the motion included a request to "set aside previous dismissal dated December 13, 2019." Ford subsequently filed a Motion to Set Aside Judgment on July 2, 2020. Ford filed his notice of appeal on July 25, 2020, one hundred and sixty-nine days after the final judgment was signed on February 7, 2020.

## **Discussion**

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, Ford’s notice of appeal was filed on July 25, 2020, one hundred and sixty-nine days after the final judgment was signed on February 7, 2020. Considering Ford’s March 14, 2020 “Motion for Trial Setting Preference” to be a motion for new trial, the motion did not extend the notice of appeal deadline because it was untimely filed more than 30 days after the judgment.<sup>1</sup> *See* TEX. R. APP. P. 26.1(a); TEX. R.

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<sup>1</sup> Ford’s July 2, 2020 Motion to Set Aside Judgment also could not extend the notice of appeal deadline because it was untimely filed more than thirty days after the judgment.

CIV. P. 329b(a). Moreover, even if Ford had filed a timely motion for new trial extending the notice of appeal deadline to ninety days following the judgment, his notice of appeal would still be seventy-nine days late. *See* TEX. R. APP. P. 26.1(a). Thus, regardless of whether the notice of appeal deadline was thirty days or ninety days after the judgment, Ford's notice of appeal was untimely filed after the Rule 26.1 deadlines 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.

### **Conclusion**

For the foregoing reasons, 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.