

Opinion issued June 8, 2021



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

NO. 01-20-00545-CV

LARRY D. FORD, Appellant

V.

SPECTRUM ASSOCIATION MANAGEMENT, Appellee

**On Appeal from the 127th District Court
Harris County, Texas
Trial Court Case No. 2019-66479**

MEMORANDUM OPINION

Appellant, Larry D. Ford, filed a notice of appeal on July 24, 2020 attempting to appeal the trial court's order signed on March 10, 2020 dismissing Ford's underlying action as baseless. We dismiss the appeal for want of jurisdiction because Ford's notice of appeal was untimely.

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 attempts to appeal an order signed by the trial court on March 10, 2020 granting appellee's motion to dismiss Ford's claims in the underlying suit as baseless. *See* TEX. CIV. PRAC. & REM. CODE § 13.001(a)(2) (authorizing dismissal of action on finding that "the action is frivolous or malicious"), (b)(2) ("in determining whether an action is frivolous or malicious, the court may consider

whether . . . the claim has no arguable basis in law or in fact”); TEX. R. CIV. P. 91a (entitled “Dismissal of Baseless Causes of Action”). On March 19, 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 that the March 10, 2020 judgment be set aside. Ford subsequently filed a Motion to Set Aside Judgment on July 6, 2020.

Ford’s July 25, 2020 notice of appeal was filed one hundred and thirty-seven days after the trial court rendered its judgment. Even considering Ford’s March 19, 2020 “Motion for Trial Setting Preference” to be a timely motion for new trial—thereby extending the notice of appeal deadline to ninety days after the judgment—the notice of appeal was due by June 8, 2020.¹ *See* TEX. R. APP. P. 26.1(a). Ford’s July 25, 2020 notice of appeal was untimely filed forty-seven days after Rule 26.1(a)’s ninety-day 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.]

¹ Ford’s July 6, 2020 Motion to Set Aside Judgment could not extend the notice of appeal deadline because it was untimely filed more than thirty days after the March 10, 2020 judgment. *See* TEX. R. CIV. P. 329b(a).

2012, no pet.). Without a timely filed notice of appeal, this Court lacks jurisdiction over the appeal. *See* TEX. R. APP. P. 25.1.

The Clerk of this Court notified Ford that this appeal was subject to dismissal for want of jurisdiction unless he demonstrated that this Court has jurisdiction over this appeal. Ford failed to file an adequate response demonstrating our jurisdiction over the appeal.²

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.

² 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 suspend rule's operation in particular case but may not "alter the time for perfecting an appeal in a civil case"). Ford further asserts that his filings extended the notice of appeal deadline to ninety days from the judgment. As discussed above, Ford's notice of appeal was untimely even under a ninety-day deadline because it was filed one hundred and thirty-seven days after the judgment.