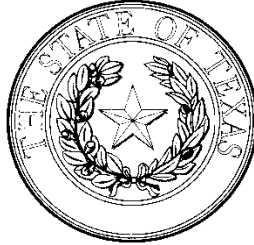


Opinion issued December 14, 2021



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

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NO. 01-21-00631-CV

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**DARREN WILSON, INDIVIDUALLY AND AS ADMINISTRATOR OF  
THE ESTATE OF MARY HEITZ, AND DONALD WILSON, Appellants**

**V.**

**AMILCAR AVENDANO, M.D. AND MEMORIAL HERMANN HEALTH  
SYSTEM D/B/A MEMORIAL HERMANN THE WOODLANDS MEDICAL  
CENTER, Appellees**

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**On Appeal from the 215th District Court  
Harris County, Texas  
Trial Court Case No. 2018-89734**

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**MEMORANDUM OPINION**

On November 11, 2021, appellants, Darren Wilson, individually and as Administrator of the Estate of Mary Heitz, and Donald Wilson (collectively,

“appellants”), filed a notice of appeal from the trial court’s rendition of summary judgment in favor of appellees, Amilcar Avendano, M.D. and Memorial Hermann Health System doing business as Memorial Hermann The Woodlands Medical Center (collectively, “appellees”), and the trial court’s October 11, 2021 order denying appellants’ motion for rehearing.

We dismiss for lack of jurisdiction.

On November 22, 2021, appellees filed a motion to dismiss for lack of jurisdiction, asserting that appellants’ notice of appeal was not timely filed. Absent a timely filed notice of appeal, we lack jurisdiction over an appeal. *See* TEX. R. APP. P. 25.1. Generally, a notice of appeal of a final judgment must be filed within thirty days after the entry of judgment. *See* TEX. R. APP. P. 26.1. However, when a party timely files certain post-judgment motions, the deadline to file a notice of appeal is extended to ninety days after the entry of judgment. *See* TEX. R. APP. P. 26.1(a)(1). Post-judgment motions generally must be filed within thirty days after the judgment is signed. *See* TEX. R. CIV. P. 329b(a), (g).

The trial court rendered judgment in favor of appellees on March 8, 2021. On September 25, 2021, appellants filed a “Motion for Rehearing on Plaintiffs’ Verified Motion to Continue Hearing on Defendants’ No-Evidence Motion for Summary Judgment, and Subject Thereto, Defendants, Memorial Hermann & Amilcar Avendano’s No-Evidence Motions for Summary Judgment.” Appellants’ motion

for rehearing was not filed until 217 days after the trial court entered its judgment. Even assuming appellants' motion for rehearing is a post-judgment motion which extends appellate deadlines, it was not timely filed, and therefore did not extend appellants' deadline for filing their notice of appeal. *See* TEX. R. CIV. P. 329b(a), (g); *see generally Lane Bank Equip. Co. v. Smith So. Equip. Co.*, 10 S.W.3d 308, 313 (Tex. 2000) (post-judgment motion seeking substantive change to existing judgment may qualify as motion to modify, extending appellate timetable). Accordingly, appellants' notice of appeal was due to be filed within thirty days of the trial court's March 8, 2021 judgment, on or before April 7, 2021. *See* TEX. R. APP. P. 26.1.

Appellants did not file their notice of appeal until November 11, 2021, which was 248 days after entry of the trial court's March 8, 2021 judgment. Because appellants failed to timely file their notice of appeal, we lack jurisdiction over their appeal of the trial court's March 8, 2021 judgment.

Further, this Court generally has jurisdiction only over appeals from final judgments and specific interlocutory orders that the Texas Legislature has designated as appealable orders. *See CMH Homes v. Perez*, 340 S.W.3d 444, 447–48 (Tex. 2011); *see also* TEX. CIV. PRAC. & REM. CODE § 51.014. In their notice of appeal, appellants stated that they also seek to appeal from the trial court's October 11, 2021 order denying their motion for rehearing. But an order denying a

post-judgment motion does not exist separate from the underlying, appealable judgment, and is not independently appealable. *See Fletcher v. Ahrabi*, No. 01-12-00794-CV, 2012 WL 6082915, at \*1 (Tex. App.—Houston [1st Dist.] Dec. 6, 2012, no pet.) (mem. op.); *Macklin v. Saia Motor Freight Lines, Inc.*, No. 06-12-00038-CV, 2012 WL 1155141, at \*1 (Tex. App.—Texarkana Apr. 6, 2012, no pet.) (mem. op.) (dismissing appeal for lack of jurisdiction because an “order denying a motion for reconsideration or motion for new trial is not a judgment, and is not independently appealable”).

Here, because appellants failed to timely file a notice of appeal of the trial court’s March 8, 2021 judgment, we also lack jurisdiction to consider an appeal of the trial court’s October 11, 2021 order denying their motion for rehearing, because the order denying the motion for rehearing “is not independently appealable.” *See Macklin*, 2012 WL 1155141, at \*1.

More than ten days have passed since appellees filed their motion to dismiss, and appellants have not responded. *See* TEX. R. APP. P. 10.3(a).

Accordingly, we grant appellees’ motion, and dismiss the appeal for lack of jurisdiction. *See* TEX. R. APP. P. 42.3(a), 43.2(f). All pending motions are dismissed as moot.

#### **PER CURIAM**

Panel consists of Justices Goodman, Rivas-Molloy, and Farris.