

Dismissed and Memorandum Opinion filed January 25, 2011.



In The

Fourteenth Court of Appeals

NO. 14-10-00877-CV

DAVID DAVILA, Appellant

V.

KALEAA DAVILA, Appellee

**On Appeal from the 387th District Court
Fort Bend County, Texas
Trial Court Cause No. 10-DCV-178317**

MEMORANDUM OPINION

This is an attempted appeal from a final decree of divorce signed May 25, 2010. The notice of appeal was not filed until September 3, 2010. The clerk's record reflects that appellant filed a motion for new trial on August 12, 2010. In addition, on August 6, 2010, appellant filed a sworn motion pursuant to Texas Rule of Civil Procedure 306a(4), asserting that he had not received notice of the judgment until July 6, 2010. Rule 306a provides a procedure by which a party can obtain a finding that it received notice of the signing of a judgment more than twenty days but less than ninety days after it was signed, thus resetting the deadlines for post-judgment motions. *See* Tex. R. Civ. P. 306a(4), (5). The record does not contain a signed written order finding the date that appellant received

notice or acquired actual knowledge that the judgment was signed, as required by Texas Rule of Appellate Procedure 4.2(c).

A sworn motion pursuant to Rule 306a reinvoles the jurisdiction of the trial court for the limited purpose of conducting a hearing to determine the date on which appellant or his counsel first received notice or acquired knowledge of the judgment. *Nathan A. Watson Co. v. Employers Mut. Cas. Co.*, 218 S.W.3d 797, 800 (Tex. App.—Fort Worth 2007, no pet). Unless appellant establishes the date of notice or knowledge of the judgment so as to extend the time for filing his motion for new trial and notice of appeal, this court is without jurisdiction over the appeal. *See Memorial Hosp. of Galveston Cty. v. Gillis*, 741 S.W.2d 364, 365 (Tex. 1987) (per curiam) (holding that compliance with the provisions of Rule 306a is a jurisdictional prerequisite when lack of notice of the judgment is claimed).

Accordingly, on September 30, 2010, this court ordered appellant to file a supplemental clerk's record containing the trial court's order establishing the date that appellant received notice or acquired actual knowledge of the judgment, thereby extending the time for filing post-judgment motions. The order advised appellant that unless the record was supplemented as ordered within thirty days, the appeal would be dismissed for want of jurisdiction. *See* Tex. R. App. P. 42.3(a). No response was filed.

On November 18, 2010, notification was transmitted to the parties of this court's intention to dismiss the appeal for want of jurisdiction unless appellant filed a response demonstrating grounds for continuing the appeal on or before December 1, 2010. *See* Tex. R. App. P. 42.3(a). Appellant filed a request for an extension of time to file the supplemental record until December 10, 2010. The request was granted, but the supplemental record was not filed.

The reporter's record was filed December 30, 2010. The record includes the record from the hearing on appellant's motion for new trial and his Rule 306a motion to determine

the date on which appellant or his counsel first received notice or acquired knowledge of the judgment. At the conclusion of the hearing, the trial court denied the motions without making a finding pursuant to rule 306a.

On January 10, 2011, appellant filed a document entitled “Memorandum: Davila’s Supplemental Record (Reporter’s Record) & Timeline.” The document contains counsel’s recitation of the timeline after judgment with citations to the reporter’s record. It does not include an order from the trial court finding the date on which appellant or his counsel first received notice or acquired knowledge of the judgment.

In the absence of an order from the trial court on appellant’s Rule 306a motion, this court is without jurisdiction over this appeal. *See Memorial Hosp.*, 741 S.W.2d at 365; *see also* Tex. R. App. P. 4.2(c). Moreover, even if appellant had established notice on July 6, 2010, the date he alleged in his motion, his post judgment motions filed August 6, 2010, and August 12, 2010, were untimely to extend the appellate timetable. A motion for new trial, or other post-judgment motion, must be filed within thirty days of the signing of the judgment. Tex. R. Civ. P. 329b(a). If appellant had properly established the date of notice as July 6, 2010, so as to commence the appellate timetable, any post-judgment motion was due on or before August 5, 2010, thirty days later. *See id.* In the absence of a timely post-judgment motion, appellant’s notice of appeal would have also been due on August 5, 2010. *See* Tex. R. App. P. 26.1. Appellant did not file his notice of appeal until September 3, 2010. In the absence of a timely notice of appeal, we are without jurisdiction.

Accordingly, the appeal is ordered dismissed.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Frost and Christopher.