



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00758-CV

Suresh V. **DUTTA**, M.D. and Yellow Rose Land and Minerals, LLC,
Appellants

v.

Richard H. **HOOD**, Jr., M.D., and Dolores Hood,
Appellees

From the 218th Judicial District Court, Frio County, Texas
Trial Court No. 15-04-00176-CVF
The Honorable Donna S. Rayes, Judge Presiding

PER CURIAM

Sitting: Sandee Bryan Marion, Chief Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: December 20, 2017

DISMISSED FOR LACK OF JURISDICTION

Suresh V. Dutta, M.D. and Yellow Rose Land and Minerals, L.L.C. attempt to appeal a judgment signed May 23, 2017. Because they timely filed a motion for new trial, the time for perfecting an appeal was extended to August 21, 2017, ninety days after the judgment was signed. *See* TEX. R. CIV. P. 329b(a); TEX. R. APP. P. 26.1(a). A motion for extension of time to file the notice of appeal was due within fifteen days, no later than September 5, 2017. *See* TEX. R. APP. P. 26.1(a), 26.3. Appellants did not file a motion for extension of time to file a notice of appeal and did not file their notice of appeal until November 1, 2017.

We ordered appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. After our show cause order issued, we granted a motion to substitute counsel for appellants. Appellants' new counsel filed a response to the show cause order, acknowledging the notice of appeal was not timely filed, but requesting we retain the appeal on the docket because the untimely filing was the result of ineffective assistance of counsel. The response requests alternatively that we abate the appeal and remand the case to the trial court for an evidentiary hearing and findings on whether counsel rendered ineffective assistance.

A timely notice of appeal must be filed in order to invoke this court's jurisdiction. *See Sweed v. Nye*, 323 S.W.3d 873 (Tex. 2010). "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 v. Dorner*, 959 S.W.2d 615, 615 (1997). This court is without authority "to alter the time for perfecting an appeal in a civil case," even for good cause. *See* TEX. R. APP. P. 2; *Cammack v. Hierholzer*, No. 04-17-00271-CV, 2017 WL 2124476, at *1 (Tex. App.—San Antonio May 17, 2017, no pet.) (mem. op.).

We deny the request to retain the appeal on the docket or to remand for an evidentiary hearing because the doctrine of ineffective assistance of counsel does not apply in civil cases in which there is not a constitutional or statutory right to counsel. *See In re E.R.W.*, 528 S.W.3d 251, 258 (Tex. App.—Houston [1st Dist.] 2017, no pet.); *Mata v. Mata*, No. 04-12-00617-CV, 2013 WL 3279539, at *1 (Tex. App.—San Antonio June 26, 2013, no pet.) (mem. op.); *Culver v. Culver*, 360 S.W.3d 526, 535 (Tex. App.—Texarkana 2011, no pet.); *Donihoo v. Lewis*, No. 01-08-00277-CV, 2010 WL 1240970, at *11 (Tex. App.—Houston [1st Dist.] Mar. 25, 2010, pet. denied) (mem. op.); *Cherqui v. Westheimer St. Festival Corp.*, 116 S.W.3d 337, 343–44 (Tex. App.—Houston [14th Dist.] 2003, no pet.). The underlying case is a civil suit involving claimed breaches of

promissory notes and a stock purchase agreement in which there was no constitutional or statutory right to counsel.

We therefore dismiss this appeal for lack of jurisdiction.

PER CURIAM