



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00104-CV

Genny **HOULE**,
Appellant

v.

ONETOUCHPOINT SOUTHWEST CORP. dba Ginny's Printing and Christopher Woodall,
Appellees

From the 225th Judicial District Court, Bexar County, Texas
Trial Court No. 2015CI05284
Honorable Solomon Casseb III, Judge Presiding

PER CURIAM

Sitting: Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: May 2, 2018

DISMISSED FOR WANT OF JURISDICTION

In the underlying case, Appellant filed a premature motion for new trial on August 10, 2017. *See* TEX. R. APP. P. 27.1(a). The trial court signed a final judgment on November 7, 2017. Appellant's motion for new trial was deemed filed and effective on November 7, 2017. *See id.*

Because Appellant's notice of appeal appeared to be untimely, we ordered Appellant to show cause in writing why this appeal should not be dismissed for want of jurisdiction.¹ Appellant

¹ On April 18, 2018, after the clerk's record was not timely filed, we ordered Appellant to show cause in writing that the fee for the clerk's record was paid. The clerk's record was filed; our April 18, 2018 order is satisfied.

timely filed a response styled as a “Motion to Show Cause in Response to the Court’s Dismissal for Want of Jurisdiction.” To the degree that Appellant’s response is a motion, the motion is denied. Because Appellant’s response misinterprets the Texas Government Code, *see* TEX. GOV’T CODE ANN. § 311.014(a) (West 2013) (“In computing a period of days, the first day is excluded and the last day is included.”), and the Texas Rules of Appellate Procedure, *see* TEX. R. APP. P. 4.1(a) (computing time), the response is unavailing.

The trial court signed the judgment on November 7, 2017. The first day, November 7, 2017, was excluded, and the count began on November 8, 2017. *See* TEX. GOV’T CODE ANN. § 311.014(a); TEX. R. APP. P. 4.1(a). Because Appellant timely filed a motion for new trial, Appellant’s notice of appeal was due ninety days later. *See* TEX. R. APP. P. 26.1(a). Counting from November 8, 2017, the 90th day was February 5, 2018. *See id.* R. 4.1(a). The last day Appellant could file her notice of appeal was fifteen days later, on February 20, 2018. *See id.* R. 26.3. *See generally* *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997) (“[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 period in which the appellant would be entitled to move to extend the filing deadline under Rule [26.3].” (emphasis added)).

Appellant’s February 21, 2018 notice of appeal was filed one day after the last day to file the notice; the late notice did not invoke this court’s jurisdiction. *See Verburgt*, 959 S.W.2d at 617 (“[O]nce 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.”). This appeal is dismissed for want of jurisdiction.

PER CURIAM