



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00590-CV

NORTH CENTRAL BAPTIST HOSPITAL,
Appellant

v.

Stacy **CHAVEZ**, Individually and as Next Friend of Minor Children Chavez,
Appellee

From the County Court at Law No. 10, Bexar County, Texas
Trial Court No. 2020CV02938
Honorable Gloria Saldaña, Judge Presiding

Opinion by: Irene Rios, Justice
Dissenting Opinion by: Luz Elena D. Chapa, Justice

Sitting: Luz Elena D. Chapa, Justice
Irene Rios, Justice
Beth Watkins, Justice

Delivered and Filed: March 17, 2021

MOTION TO DISMISS GRANTED; DISMISSED FOR LACK OF JURISDICTION

A timely notice of appeal is necessary to invoke this court's jurisdiction. *In re L.R.S.*, No. 04-20-00507-CV, 2020 WL 7365444, at *1 (Tex. App.—San Antonio Dec. 16, 2020, no pet.) (mem. op). In this case, the appellant's notice of appeal was not timely filed. Therefore, we are required to dismiss this appeal for lack of jurisdiction.

The clerk's record shows the trial court signed a final judgment on July 28, 2020. Because the appellant timely filed a motion for new trial, its notice of appeal was due no later than October 26, 2020. *See* TEX. R. APP. P. 26.1(a) (stating if a motion for new trial is timely filed, "the

notice of appeal must be filed within [ninety] days after the judgment is signed . . .”). However, the appellant did not file its notice of appeal until November 30, 2020.

On December 18, 2020, we advised the appellant that its November 30, 2020 notice of appeal was untimely, and we ordered it to show cause in writing why this appeal should not be dismissed for lack of jurisdiction. *See* TEX. R. APP. P. 42.3(a); *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997). On that same day, the appellee filed a motion to dismiss this appeal for lack of jurisdiction. The appellant timely filed a response to our show cause order and the appellee’s motion to dismiss.

In its response, the appellant argues the trial court extended the deadline to file the notice of appeal when it extended the deadline to issue a decision on the motion for new trial. The appellant further argues its notice of appeal was timely because the notice of appeal was filed within thirty days of the trial court denying the motion for new trial. We reject these arguments. A trial court does not have the authority to extend the deadline for filing a notice of appeal.¹ *Satterthwaite v. First Bank*, No. 02-20-00182-CV, 2020 WL 4359400, at *1 (Tex. App.—Fort Worth July 30, 2020, no pet.) (mem. op.); *In re J.A.*, 53 S.W.3d 869, 872 (Tex. App.—Dallas 2001, no pet.). Moreover, “the time for filing a notice of appeal runs from the signing of the final judgment, not the subsequent denial of a motion for new trial.” *See Morris v. Wells Fargo Bank, N.A.*, No. 01-19-00610-CV, 2019 WL 4677365, at *2 (Tex. App.—Houston [1st Dist.] Sept. 26, 2019, no pet.) (mem. op). As such, the time for filing a notice of appeal is not altered by a trial court’s ruling on a motion for new trial. *See* TEX. R. APP. P. 26.1; *see also Meuth v. Meuth*, No. 03-

¹ Under the Texas Rules of Appellate Procedure, only the appellate court has the authority to extend the deadline for filing a notice of appeal. *See* TEX. R. APP. P. 26.3 (providing the appellate court may extend the time to file the notice of appeal when the appellant files a notice of appeal within fifteen days after the deadline for filing the notice of appeal); *see also Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997). Rule 26.3 is not applicable here because the appellant did not file its notice of appeal within fifteen days after the deadline for filing the notice of appeal.

18-00860-CV, 2019 WL 332270, at *1 n.1 (Tex. App.—Austin Jan. 25, 2019, no pet.) (mem. op.) (“[T]he deadline for filing a notice of appeal does not run from the date of the denial of the motion for new trial, but rather from the date of the signing of the final judgment . . .”).

In the alternative, the appellant argues we should modify the deadline to file its notice of appeal because of “the significant confusion in the proceedings before the [t]rial [c]ourt that resulted from the operational changes implemented to respond to the COVID-19 pandemic” In response to the COVID-19 pandemic, the Texas Supreme Court’s Twenty-Sixth Emergency Order permitted courts to extend certain deadlines until December 1, 2020, and required courts to do so “to avoid risk to court staff, parties, attorneys, jurors, and the public.”² See Twenty-Sixth Emergency Order Regarding the COVID-19 State of Disaster, Misc. Docket No. 20-9112 (Tex. Sept. 18, 2020).

Assuming without deciding the Twenty-Sixth Emergency Order grants this court the discretion to extend the notice of appeal deadline, we decline to exercise our discretion to do so in this case. See *Porch v. Daimler Trucks N. Am., LLC*, No. 03-20-00445-CV, 2020 WL 7063575, at *2 (Tex. App.—Austin Dec. 3, 2020, pet. filed) (mem. op.). The appellant did not file a motion requesting an extension of the deadline to file its notice of appeal. See *id.* at *1 (recognizing a “notice of appeal itself cannot serve as an implied motion for extension of time” when it is filed more than fifteen days after the notice of appeal deadline); see also *Carrigan v. Edwards*, No. 13-20-00093-CV, 2020 WL 6504418, at *2 (Tex. App.—Corpus Christi–Edinburg Nov. 5, 2020, no pet. h.) (mem. op.) (“[T]he Texas Supreme Court’s Emergency Orders are not self-executing; they

² To support its argument, the appellant cites both the Twenty-Sixth Emergency Order and the Twenty-Ninth Emergency Order. The Twenty-Ninth Emergency Order, which contains substantially the same language as the Twenty-Sixth Emergency Order, permitted courts to “modify or suspend any and all deadlines and procedures . . . for a stated period ending no later than February 1, 2021[.]” and required courts to do so “to avoid risk to court staff, parties, attorneys, jurors, and the public.” Twenty-Ninth Emergency Order Regarding the COVID-19 State of Disaster, Misc. Docket No. 20-9135 (Tex. Nov. 11, 2020).

permit courts to extend deadlines, and they require extensions in certain instances, but they do not extend deadlines themselves.”). Instead, the appellant vaguely argues in its response to the motion to dismiss that we should modify the deadline because of confusion in the trial court resulting from the COVID-19 pandemic. *See Jones v. White*, No. 02-20-00198-CV, 2020 WL 5666564, at *1 (Tex. App.—Fort Worth Sept. 24, 2020, no pet.) (mem. op.) (“[T]he fact of the pandemic, standing alone, is not a reasonable explanation for a missed appellate deadline.”); *see also Carrigan*, 2020 WL 6504418, at *2 (“[T]he pandemic conditions do not generate a blanket excuse which can be used to extend deadlines indefinitely, especially in the absence of any specific explanation for why such extensions are warranted.”). Moreover, appellant’s response to the motion to dismiss shows the appellant was aware of the deadline to file its notice of appeal, but consciously chose not to file the notice of appeal until after the trial court heard the motion for new trial. This court has already held “[a]n explanation that shows a conscious or strategic decision to wait to file a notice of appeal—such as waiting on the trial court to rule on a post-judgment motion—is not a reasonable explanation for an extension” even during the COVID-19 pandemic. *Bratton v. Holt Tex., Ltd.*, No. 04-20-00234-CV, 2020 WL 6048776, at *1 (Tex. App.—San Antonio Oct. 14, 2020, no pet.) (mem. op.). Based on appellant’s stated reasons for its delay, we disagree with appellant that the failure to timely file its notice of appeal is due to the COVID-19 pandemic.

Here, the appellant’s motion for new trial extended the deadline for filing the notice of appeal to October 26, 2020, ninety days after the final judgment was signed. *See TEX. R. APP. P. 26.1(a)*. The appellant’s notice of appeal was untimely because it was filed on November 30, 2020, thirty-five days after the October 26, 2020 deadline. In the absence of a timely-filed notice of appeal, we have no jurisdiction over this appeal. *See In re L.R.S.*, 2020 WL 7365444 at *1 (recognizing an appellate court’s jurisdiction is invoked when the appellant timely files a notice of

appeal). We, therefore, grant the appellee's motion to dismiss, and dismiss this appeal for lack of jurisdiction.

Irene Rios, Justice