



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00255-CV

RUSSELL TERRY MCELVAIN

APPELLANT

V.

ROBIN MCELVAIN

APPELLEE

FROM THE 360TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 360-468210-09

MEMORANDUM OPINION¹

Pro se Appellant Russell Terry McElvain attempts to file a restricted appeal of the trial court's August 1, 2014 judgment dismissing his cause of action for want of prosecution. A notice of restricted appeal must be filed within six months

¹See Tex. R. App. P. 47.4.

after the judgment or order complained of is signed.² Appellant's notice of restricted appeal was not filed until July 11, 2016, more than twenty-three months after the trial court signed the complained-of judgment.

On July 22, 2016, we therefore notified Appellant of our concern that we lack jurisdiction over this appeal because his notice of appeal was untimely filed,³ and we warned that this appeal could be dismissed absent a response showing grounds for continuing the appeal.⁴ On July 29, 2016, Appellant filed an untimely motion to extend the appellate deadline, which we also treat as his response. The document does not show grounds for continuing this appeal.

The time for filing a notice of appeal is jurisdictional in this court, and absent a timely notice of appeal or extension request, we have no choice but to dismiss the appeal.⁵ Because Appellant's notice of restricted appeal and motion to extend the appellate deadline were both filed too late, we dismiss the pending motion, and we dismiss this appeal for want of jurisdiction.⁶

²See Tex. R. App. P. 26.1(c).

³See Tex. R. App. P. 26.1.

⁴See Tex. R. App. P. 42.3(a).

⁵See Tex. R. App. P. 2, 25.1(b), 26.3; *Jones v. City of Houston*, 976 S.W.2d 676, 677 (Tex. 1998); *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997).

⁶See Tex. R. App. P. 42.3(a), 43.2(f); *Jones*, 976 S.W.2d at 677; *Verburgt*, 959 S.W.2d at 617; see also *McElvain v. McElvain*, No. 02-16-00256-CV, 2016 WL 4491232, at *1 (Tex. App.—Fort Worth Aug. 26, 2016, no pet. h.) (dismissing Appellant's related appeal for same reason).

PER CURIAM

PANEL: DAUPHINOT, GARDNER, and WALKER, JJ.

DELIVERED: September 29, 2016