



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

**NO. 02-16-00393-CV**

MICHAEL W. CHAPMAN

APPELLANT

V.

JAMES A. SALMON

APPELLEE

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FROM THE 271ST DISTRICT COURT OF JACK COUNTY  
TRIAL COURT NO. 14-02-014  
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**MEMORANDUM OPINION<sup>1</sup>**  
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This is an appeal from a judgment enforcing a settlement agreement and awarding sanctions. The trial court's original judgment was rendered on May 6, 2016. Appellant Michael W. Chapman filed a timely motion for new trial, which the trial court considered at a hearing on July 8, 2016. Although the trial court signed an order on September 19, 2016 denying the motion for new trial and

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<sup>1</sup>See Tex. R. App. P. 47.4.

reaffirming the sanctions award—modifying to whom the sanctions were payable and the date upon which the payment was to be made—that order was signed after the trial court’s plenary power had expired on August 19, 2016. See Tex. R. Civ. P. 329b(a), (c), (e). On October 18, 2016, appellant filed a timely notice of appeal from the September 19, 2016 order. Although we informed him that an appeal from the May 6, 2016 order would be untimely, he did not respond. See Tex. R. App. P. 42.3.

Any attempt to appeal from the May 6, 2016 judgment is untimely. See Tex. R. App. P. 26.1(a), 26.3. Thus, we do not have jurisdiction over any appeal from that judgment. See Tex. R. App. P. 25.1(b); *In re K.M.Z.*, 178 S.W.3d 432, 433 (Tex. App.—Fort Worth 2005, no pet.). Additionally, because the September 19, 2016 order was signed outside the trial court’s plenary power and does not appear to be correcting a mere clerical error, it is void. See Tex. R. Civ. P. 316, 329b(f); *State ex rel. Latty v. Owens*, 907 S.W.2d 484, 486 (Tex. 1995); *Escobar v. Escobar*, 711 S.W.2d 230, 231 (Tex. 1986) (explaining difference between clerical error, which may be corrected after expiration of plenary power, and judicial error, which may not). Although an appeal may be taken to challenge a void order, in this case the September 19, 2016 order was substantively the same as the May 6, 2016 judgment except for the following: (1) it gave appellant additional time to pay the amounts awarded; (2) it provided that appellant pay the entire \$15,758 award to either appellee James A. Salmon or his attorneys (rather than \$758 to Spiller Abstract and \$15,000 to appellee);

and (3) it provided that postjudgment interest would accrue at the rate of five percent rather than “at the highest lawful rate allowed.” Appellant does not appear to be challenging the void September 19, 2016 order but rather the May 6, 2016 judgment as “reaffirmed” and incorporated into the September 19, 2016 order.

Accordingly, we dismiss the appeal. See Tex. R. App. 42.3(a), 43.2(f); *Latty*, 907 S.W.2d at 486; *Reames v. Reames*, No. 2-07-450-CV, 2008 WL 624109, at \*1 (Tex. App.—Fort Worth Mar. 6, 2008, no pet.) (mem. op.).

PER CURIAM

PANEL: LIVINGSTON, C.J.; WALKER and MEIER, JJ.

DELIVERED: December 15, 2016