



**In the  
Court of Appeals  
Second Appellate District of Texas  
at Fort Worth**

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No. 02-18-00341-CV

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JERALD H. MILLER, Appellant

V.

SHEREE LUCAS, Appellee

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On Appeal from the 352nd District Court  
Tarrant County, Texas  
Trial Court No. 352-291003-17

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Before Gabriel, Kerr, and Pittman, JJ.  
Memorandum Opinion by Justice Gabriel

## MEMORANDUM OPINION

Appellant Jerald H. Miller attempts to appeal from the trial court’s “Final Judgment”<sup>1</sup> in favor of appellee Sheree Lucas and from “all judgments . . . to the date of [his] Notice of Appeal.” After timely filing a motion for new trial on July 24,<sup>2</sup> which the trial court denied on July 31, Miller filed a notice of appeal on October 22. On October 24, we notified Miller that his notice of appeal appeared to have been untimely filed and advised that we would dismiss his appeal for want of jurisdiction unless he responded no later than November 5 and showed grounds to continue the appeal. *See* Tex. R. App. P. 42.3(a), 44.3. Miller did not respond.

Because Miller timely filed a motion for new trial but did not file a motion to extend the time to file his notice of appeal, the notice was due no later than September 19. *See* Tex. R. App. P. 26.1(a)(1). Because Miller filed his notice of appeal thirty-three days after the appellate deadline expired, we do not have jurisdiction over his attempted appeal. *See Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997); *Florence v. Miller*, No. 02-17-00325-CV, 2017 WL 4683829, at \*1 (Tex. App.—Fort Worth Oct. 19, 2017, no pet.) (mem. op.); *Ross v. Guerra*, 83 S.W.3d 899, 900 (Tex. App.—

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<sup>1</sup>Miller erroneously states in his notice of appeal that the date of the final judgment was July 31, 2018; but the trial court signed the final judgment on June 21, 2018.

<sup>2</sup>Although the motion was filed one day after the thirty-day deadline expired, Miller had placed it in the mail on July 21, rendering it timely filed. *See* Tex. R. Civ. P. 5, 329b(a); *see also* Tex. R. App. P. 9.2(b)(1).

Texarkana 2002, no pet.); *see also* Tex. R. App. P. 26.3. Accordingly, we dismiss the appeal for want of jurisdiction. *See* Tex. R. App. P. 43.2(f).

/s/ Lee Gabriel

Lee Gabriel  
Justice

Delivered: December 13, 2018