

NO. 07-08-0252-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL C
AUGUST 5, 2008

JAN MURRAY McDONALD, APPELLANT

V.

WELLS FARGO BANK NATIONAL AS TRUSTEE, ET AL., APPELLEES

FROM THE 181ST DISTRICT COURT OF RANDALL COUNTY;

NO. 58985B; HONORABLE JOHN B. BOARD, JUDGE

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

MEMORANDUM OPINION

Proceeding pro se, Appellant, Jan Murray McDonald, brought this appeal from the trial court's final summary judgment in favor of Appellees, Wells Fargo Bank National as Trustee, et al. (Wells Fargo). Pending before this Court is Wells Fargo's *Motion to Dismiss for Want of Jurisdiction* by which it contends that McDonald's notice of appeal was untimely. We agree and grant the motion and dismiss.

Final summary judgment was signed by the trial court on March 12, 2008. McDonald filed a request for findings of fact and conclusions of law on March 28, 2008. He then filed his notice of appeal on June 9, 2008. Wells Fargo filed its motion to dismiss on June 27, 2008. By letter dated July 10, 2008, this Court advised McDonald of the untimely notice and directed that he demonstrate why this appeal should not be dismissed for want of jurisdiction on or before July 21, 2008. Tex. R. App. P. 42.3(a). McDonald did not respond.

A notice of appeal is due within thirty days after judgment is signed. Tex. R. App. P. 26.1. The deadline is extended to ninety days under certain circumstances. Tex. R. App. P. 26.1(a). One of those circumstances is timely filing a request for findings of fact and conclusions of law *“if findings and conclusions either are required by the Rules of Civil Procedure or, if not required, could properly be considered by the appellate court;”* (emphasis added). Tex. R. App. P. 26.1(a)(4). However, findings of fact and conclusions of law are not proper in reviewing a summary judgment and do not extend the time in which to file a notice of appeal from thirty days to ninety days. See *Linwood v. NCNB Texas*, 885 S.W.2d 102, 103 (Tex. 1994). See also *IKB Industries Ltd. v. Pro-Line Corp.*, 938 S.W.2d 440, 443 (Tex. 1997).

The summary judgment was signed on March 12, 2008, making the notice of appeal due on or before April 11, 2008. The notice of appeal filed on June 9, 2008, eighty-nine

days after judgment was signed, is untimely. Consequently, this Court lacks jurisdiction to review McDonald's appeal.

Accordingly, Wells Fargo National Bank as Trustee, et al.'s *Motion to Dismiss for Want of Jurisdiction* is granted and the appeal is dismissed for want of jurisdiction.

Patrick A. Pirtle
Justice