

NO. 07-10-00065-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL B
MARCH 31, 2010

RICKY D. STARKS, APPELLANT

v.

TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, APPELLEE

FROM THE 108TH DISTRICT COURT OF POTTER COUNTY;
NO. 91,655-00-E; HONORABLE DOUGLAS WOODBURN, JUDGE

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

MEMORANDUM OPINION

Appellant, Ricky D. Starks, appeals an order granting appellee, the Texas Department of Criminal Justice, summary judgment. We dismiss for want of jurisdiction.

The clerk's record reflects that Starks filed notice of appeal on February 22, 2010. The judgment appealed from was signed on October 20, 2009. Appellant filed a motion for new trial on December 16, 2009. A timely filed motion for new trial will extend the deadline for filing notice of appeal to 90 days from the date judgment was

signed. See TEX. R. APP. P. 26.1. However, in the present case, appellant's motion for new trial was not timely filed. See TEX. R. CIV. P. 329b(a).

Texas Rule of Civil Procedure 306a provides an exception to the general rule when a party does not receive notice of judgment until 20 or more days after judgment is signed so long as the notice is received prior to the ninety-first day after the judgment is signed. See TEX. R. CIV. P. 306a(4). Under the procedures established by this rule, the party adversely affected is required to prove in the trial court, on sworn motion and notice, the date on which the party or his attorney first either received a notice of the judgment or acquired actual knowledge of the signing. See TEX. R. CIV. P. 306a(5). Compliance with the provisions of rule 306a is a jurisdictional prerequisite. See Mem'l Hosp. v. Gillis, 741 S.W.2d 364, 365 (Tex. 1987) (per curiam).

On January 22, 2010, appellant filed a motion to extend postjudgment deadlines in an attempt to comply with the requisites of rule 306a(5). However, appellant swore that "the foregoing [the motion] is true and correct to the best of my knowledge" The "sworn motion" required by rule 306a(5) is not satisfied by the affiant's allegation that "the facts contained herein are true and correct to the best of my knowledge." In re Simpson, 932 S.W.2d 674, 677 (Tex.App.—Amarillo 1996, no writ). Rather, to be sufficient, the allegation must directly and unequivocally represent the facts are true and within the personal knowledge of the affiant. Id. (citing Burke v. Satterfield, 525 S.W.2d 950, 954-55 (Tex. 1975)).

By letter dated March 17, 2010, the Court notified Starks that it appeared from the clerk's record that this Court's jurisdiction was not properly invoked and directed

Starks to show cause why the appeal should not be dismissed for want of jurisdiction. Starks filed a response on March 26, 2010.

In this response, Starks contends that, as an inmate, he is allowed to file an unsworn declaration in lieu of a sworn certification. See TEX. CIV. PRAC. & REM. CODE ANN. § 132.001 (Vernon Supp. 2009). While Starks is correct, it is the equivocal nature of his unsworn declaration that is fatal to his motion, rather than the failure to have the declaration sworn.

In addition, Starks contends that this Court cannot “raise” the issue of a defect in his motion to extend postjudgment deadlines. Compliance with the provisions of rule 306a is necessary to invoke this Court’s jurisdiction when notice of appeal is untimely filed. See Gillis, 741 S.W.2d at 365. If notice of appeal is not filed timely, the appellate court’s jurisdiction is invoked only to the extent that the court may determine its lack of jurisdiction and dismiss the appeal. See Simpson, 932 S.W.2d at 679. Courts must address questions of jurisdiction both *sua sponte* and when raised by the parties. Buffalo Royalty Corp. v. Enron Corp., 906 S.W.2d 275, 277 (Tex.App.--Amarillo 1995, no writ). Thus, this Court can not only “raise” the issue of its jurisdiction, but it must do so when that jurisdiction is absent or has not been properly invoked.

For the foregoing reasons, we dismiss Stark’s appeal for want of jurisdiction.

Mackey K. Hancock
Justice