



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-17-00301-CV

DEREK G. HOWARD AND EUBY J. KERR III, APPELLANTS

V.

SOUTHWESTERN PUBLIC SERVICE COMPANY, APPELLEE

On Appeal from the 100th District Court
Collingsworth County, Texas
Trial Court No. 7852; Honorable Stuart Messer, Presiding

August 31, 2017

MEMORANDUM OPINION

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

Appellants, Derek G. Howard and Euby J. Kerr III, filed a notice of appeal from the trial court's final judgment. We dismiss the appeal for want of jurisdiction.

The trial court signed the judgment on April 25, 2017. Because Appellants timely filed a motion for new trial, their notice of appeal was due ninety days after the judgment was signed, i.e., by July 24. See TEX. R. APP. P. 26.1(a) (A notice of appeal is due

within thirty days after the judgment is signed or within ninety days if a motion for new trial, motion to modify the judgment, motion to reinstate, or a request for findings of fact and conclusions of law is timely filed.). This deadline could have been extended to August 8 had Appellants filed a notice of appeal within the fifteen-day extension period. See TEX. R. APP. P. 26.3, 10.5(b); *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997) (implying a motion for extension when an appellant tenders a notice of appeal within fifteen days after the notice deadline). Appellants did not file their notice of appeal, however, until August 10. That day, Appellants also filed a motion for extension of time to file the notice of appeal, indicating that the notice deadline had been miscalculated. On August 18, Appellants filed a motion to voluntarily dismiss this appeal.

A timely notice of appeal is essential to invoking this court's jurisdiction. See TEX. R. APP. P. 25.1(b), 26.1; *Verburgt*, 959 S.W.2d at 616. Notwithstanding that the Texas Supreme Court has directed us to construe the Rules of Appellate Procedure reasonably and liberally so that the right of appeal is not lost by imposing requirements not absolutely necessary to effect the purpose of those rules, *Verburgt*, 959 S.W.2d at 616-17, we are prohibited from enlarging the time for perfecting an appeal in a civil case. See TEX. R. APP. P. 2 (providing that we may not suspend a rule's operation or order a different procedure to alter the time for perfecting an appeal). Thus, this court has no discretion to permit Appellants untimely filed notice of appeal to confer jurisdiction over this appeal.

Accordingly, we deny Appellants' motion for extension of time to file a notice of appeal and dismiss the appeal for want of jurisdiction. See TEX. R. APP. P. 42.3(a).¹ Appellants' motion to voluntarily dismiss this appeal is, therefore, rendered moot.

Per Curiam

¹ As Appellants seek to voluntarily dismiss their appeal, the court suspends the ten days' notice requirement of Appellate Rule 42.3. See TEX. R. APP. P. 2, 42.3.