



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-10-00018-CV

NABORS WELL SERVICES CO., A/K/A NABORS WELL SERVICES, LTD.,
AND BUFFCO PRODUCTION, INC., Appellants

V.

BRENDA AVILES, INDIVIDUALLY AND ON BEHALF OF VICTORIA
AVILES, A MINOR CHILD, AND ON BEHALF OF THE ESTATE OF
VICTOR FILOMENO AVILES, Appellee

On Appeal from the 123rd Judicial District Court
Panola County, Texas
Trial Court No. 2008-386

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

Nabors Wells Services Co., a/k/a Nabors Wells Services, Ltd., and Buffco Production, Inc. (collectively Nabors), appeal a trial court's order denying their amended motion to compel arbitration. We dismiss this appeal for want of jurisdiction.

To timely perfect an accelerated appeal, the notice of appeal must be filed within twenty days after the order is signed. TEX. R. APP. P. 26.1(b), 28.1; *In re K.A.F.*, 160 S.W.3d 923, 927 (Tex. 2005). The times for filing a notice of appeal are jurisdictional; and, absent a timely filed notice of appeal or an extension request, we must dismiss the appeal. *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997) (holding that, once extension period has passed, party can no longer invoke appellate court's jurisdiction); *Pandozy v. Beaty*, 254 S.W.3d 613, 616 (Tex. App.—Texarkana 2008, no pet.).

Nabors filed its first motion to compel arbitration October 18, 2008. After a hearing April 17, 2009, the trial court signed, on July 17, 2009, a judgment denying the motion to compel. An amended motion to compel arbitration was filed November 20, 2009. On February 19, 2010, the trial court denied the amended motion to compel. In its February order, the trial court found “that the Amended Motion to Compel is a Motion for Reconsideration of the Court's prior Orders of July 17, 2010.” It did not grant or deny the amended motion to compel. Instead, it found that “its prior Orders of July 17, 20[09] [sic] should not be withdrawn.”

From a review of both motions to compel, it appears that, aside from references to additional evidence and caselaw, the motions are the same. We look to the substance of the motion, rather than the title, to determine its nature. *Tex.-Ohio Gas, Inc. v. Mecom*, 28 S.W.3d 129, 142 (Tex. App.—Texarkana 2000, no pet.). “A motion’s substance is to be determined by the body of the instrument and its prayer for relief.” *Id.* While the amended motion to compel arbitration does not pray that the trial court reconsider its prior order per se, it substantively prays for the same relief as contained in the October 18, 2009, prayer for relief. Most importantly, the amended motion was filed after the trial court denied the first motion to compel arbitration. Thus, we conclude, as did the trial court, that the amended motion to compel was a motion for reconsideration of the court’s earlier order. *See In re Valdes*, No. 01-08-00165-CV, 2008 WL 1829790, at *1 (Tex. App.—Houston [1st Dist.] Apr. 24, 2008, no pet.) (mem. op.) (appellant’s motion for reconsideration was amended motion for new trial and did not extend trial court’s plenary power); *In re M.M.L.*, 241 S.W.3d 546, 560 (Tex. App.—Amarillo 2006, pet. denied) (amended motion for new trial based on newly discovered evidence has no impact on appellate timetable); *W.A. Moncrief v. M.J. Harvey*, 805 S.W.2d 20, 22 n.3 (Tex. App.—Dallas 1991, no writ) (amended motions had no effect on appellate timetable).

Nabors’ amended motion does not extend the appellate timetable. This case is similar to *Hydro Management Systems, LLC v. Jalin, Ltd.*, No. 04-09-00813-CV, 2010 WL 1817813 (Tex. App.—San Antonio May 5, 2010, no pet. h.) (mem. op.). In that case, the trial court signed, on

September 8, 2009, an order denying appellant’s motion to compel arbitration. *Id.* at *1. A motion for reconsideration was filed September 25, and the court denied it November 30, 2009. Notice of appeal was filed December 17, 2009, within twenty days of the order denying the motion for reconsideration, but outside of twenty days from the order denying motion to compel arbitration. *Id.* Our sister court noted the fact that the later order did nothing to modify the first, ruled that the “motion for reconsideration did not extend the time for perfecting an appeal of the trial court’s interlocutory order,” and concluded that notice of appeal was untimely filed. *Id.* The appeal was dismissed for want of jurisdiction. *Id.*

Similarly, the order denying Nabors’ motion to compel arbitration in this case was signed in July 2009, and notice of appeal was filed March 12, 2010. Thus, because the notice of appeal was untimely filed, we dismiss this case for want of jurisdiction. *See* TEX. R. APP. P. 26.1(b).

Josh R. Morriss, III
Chief Justice

Date Submitted: July 6, 2010
Date Decided: July 7, 2010