



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

---

No. 06-15-00080-CV

---

JOHN W. BOWERS, Appellant

V.

BANK OF AMERICA, N.A., Appellee

---

On Appeal from the 345th District Court  
Travis County, Texas  
Trial Court No. D-1-GN-12-002006

---

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

## MEMORANDUM OPINION

The clerk's record in the referenced matter was filed by this Court on January 6, 2016. On our review of the record, as well as the Appellee's Motion to Dismiss for Want of Jurisdiction and the responsive pleadings relating to the motion, we noted a potential defect in the Court's jurisdiction over this appeal.

The Travis County<sup>1</sup> judgment from which this appeal was taken was signed by the trial court April 29, 2015, and for purposes of perfecting an appeal, Bowers was required to file either a notice of appeal or a motion for new trial within thirty days of April 29, or by May 29, 2015. *See* TEX. R. CIV. P. 329b(a); TEX. R. APP. P. 26.1(a). Bowers' motion for new trial was timely filed May 29, 2015, successfully extending the deadline for filing his notice of appeal to ninety days from the date the judgment was signed. Thus, Bowers' notice of appeal was technically due July 28, 2015. However, motions for extension of time under Rule 26.3 of the Texas Rules of Appellate Procedure, as well as the fifteen-day grace period contemplated by that Rule, are typically implied in civil cases; consequently, Bowers actually had an additional fifteen days from the final filing deadline, or until August 12, 2015, to timely file his notice of appeal. The date stamp from the Travis County District Clerk's Office indicates that the notice of appeal was filed September 10, 2015, and the certificate of service signed by counsel confirms that the notice was mailed or served on or near September 10, 2015, well after the fully extended deadline for perfecting a notice of appeal.

---

<sup>1</sup>Originally appealed to the Third Court of Appeals in Austin, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. *See* TEX. GOV'T CODE ANN. § 73.001 (West 2013). We follow the precedent of the Third Court of Appeals in deciding this case. *See* TEX. R. APP. P. 41.3.

Bowers contends, however, that the notice of appeal is an appeal from the denial of the motion for new trial. Bowers apparently takes the position that the deadline for perfecting an appeal runs from the date the motion for new trial was overruled by the trial court. That position, however, is in direct conflict with both the Texas Rules of Appellate Procedure and with relevant caselaw from the Austin Court of Appeals. The time line for perfecting an appeal by filing a notice of appeal commences from the date the final judgment or order is signed by the trial court. *See* TEX. R. APP. P. 26.1. If a motion for new trial was timely filed, then the deadline for filing a notice of appeal would be ninety days after the judgment or order was signed. *Id.* No provision in any of the rules refers to the commencement of an appellate time line or sets a deadline for perfecting an appeal by reference to the date of overruling a motion for new trial. *Roth v. Raatz*, No. 03-02-00735-CV, 2003 WL 192137, at \*2 (Tex. App.—Austin Jan. 30, 2003, no pet.) (mem. op.).

By letter dated January 6, 2016, we notified counsel for Bowers of this potential defect in our jurisdiction and afforded him the opportunity to respond. To date, no response has been filed.

Because Bowers' notice of appeal was untimely, as previously explained, we lack jurisdiction to hear this appeal.

We dismiss this appeal for want of jurisdiction.

Josh R. Morriss, III  
Chief Justice

Date Submitted: January 27, 2016  
Date Decided: January 28, 2016