

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-05-00229-CV

Avraham Raphael, Appellant

v.

Texas Department of Agriculture and Sysco Food Services of Houston, Appellees

**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 98TH JUDICIAL DISTRICT
NO. GN402013, HONORABLE PETER M. LOWRY, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant Avraham Raphael seeks to appeal from a district court order dismissing his lawsuit as frivolous. *See* Tex. Civ. Prac. & Rem. Code Ann. § 14.003 (West 2002). Appellees Texas Department of Agriculture and Sysco Food Services of Houston have filed motions to dismiss for want of jurisdiction. *See* Tex. R. App. P. 42.3(a). The order dismissing Raphael's case was signed and entered on August 25, 2004. The deadline for perfecting appeal was therefore September 24, 2004. *See* Tex. R. App. P. 26.1. Raphael filed an attempted notice of appeal with the district court clerk on March 24, 2005. He filed a notice of appeal with the district court clerk that more closely met the appellate procedure rules on April 4, 2005. *See* Tex. R. App. P. 25.1. He did not file any motion contesting the order between the time the order was entered and the expiration of the district court's plenary power, nor did he seek an extension within 15 days after the deadline for filing the notice of appeal. *See id.* 26.1; 26.3.

Raphael claims that he lacked notice of the order and relies on rule 306a(4) to restart his appellate deadlines; however, that rule states that the appellate time periods cannot begin to run more than ninety days after the judgment or other appealable order was signed. *See* Tex. R. Civ. P. 306a(4); *see also* Tex. R. App. P. 4.2(a)(1). Complying with the provisions of Rule 306a is a jurisdictional requisite. *Memorial Hosp. v. Gillis*, 741 S.W.2d 364, 365 (Tex. 1987); *Grondona v. Sutton*, 991 S.W.2d 90, 91 (Tex. App.—Austin 1998, pet. denied). Under the circumstances, we lack jurisdiction to dispose of the purported appeal in any manner other than dismissal for want of jurisdiction. *See Grondona*, 991 S.W.2d at 91. We grant appellees’ motions and dismiss the appeal. Tex. R. App. P. 42.3(a).

Jan P. Patterson, Justice

Before Chief Justice Law, Justices Patterson and Puryear

Dismissed for Want of Jurisdiction

Filed: August 26, 2005