

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-05-00428-CV**

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**Joe Pena, Sr., Appellant**

**v.**

**Scott and White Memorial Hospital, Scott Sherwood  
and Brindley Foundation, Appellees**

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**FROM THE DISTRICT COURT OF BELL COUNTY, 169TH JUDICIAL DISTRICT  
NO. 207332-C, HONORABLE GORDON G. ADAMS, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

On August 23, 2005, this Court notified appellant, Joe Pena, Sr., that it appeared from the record that this Court lacks jurisdiction because his notice of appeal was not timely filed. We informed him that his appeal would be dismissed unless he could show that the Court has jurisdiction. In response, Pena asserts that his notice of appeal was filed on June 24, 2005. He contends that his notice of appeal, filed 90 days after his receipt of the district court's summary judgment, was timely because he requested findings of fact and conclusions of law. *See* Tex. R. App. P. 26.1(a)(4).

Even assuming Pena's notice of appeal was filed on June 24, it is still untimely. A request for findings of fact and conclusions of law only extends the time for filing a notice of appeal when findings are "required by the Rules of Civil Procedure or, if not required, could properly be

considered by the appellate court.” *Id.* The supreme court has held that a trial court should not make findings of fact and conclusions of law in a summary judgment, and that any such findings may not be considered by appellate courts. *See IKB Indus. (Nigeria) Ltd. v. Pro-Line Corp.*, 938 S.W.2d 440, 441-42 (Tex. 1997). “Because a request for findings and conclusions following summary judgment can have no purpose, should not be filed, and if filed, should be ignored by the trial court, such a request should not extend appellate deadlines.” *Id.*; *see also* Tex. R. App. P. 26.1(A)(4). Accordingly, Pena’s notice of appeal should have been filed within 30 days of the summary judgment.<sup>1</sup> *See* Tex. R. App. P. 26.1.

We hold that Pena’s notice of appeal was untimely and that he has failed to perfect an appeal. *See id.* We dismiss the appeal for want of jurisdiction.

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Bea Ann Smith, Justice

Before Chief Justice Law, Justices B. A. Smith and Puryear

Dismissed for Want of Jurisdiction

Filed: September 22, 2005

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<sup>1</sup> Pena’s notice of appeal was also filed well after the 15 day period in which a motion to extend time would be implied.