

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-18-00643-CV

Michael Bernard Bailey, Appellant

v.

Judith Chiawotu Bailey, Appellee

**FROM THE 353RD DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-FM-17-004996, THE HONORABLE KARIN CRUMP, JUDGE PRESIDING**

MEMORANDUM OPINION

On September 28, 2018, appellant Michael Bernard Bailey filed a notice of appeal from a final judgment signed by the trial court on May 29, 2018. Appellant timely filed a motion for new trial on June 28, 2018. *See* Tex. R. Civ. P. 329b. Appellant’s motion for new trial extended his deadline for filing a notice of appeal until 90 days after the judgment was signed, making the deadline August 27, 2018. *See* Tex. R. App. P. 26.1(a)(1). That deadline might have been extended until September 11, 2018, if appellant had filed either a notice of appeal with the trial court or a motion for extension of time with this Court within 15 days after the deadline for filing the notice of appeal. *See* Tex. R. App. P. 26.3; *Verburgt v. Dorner*, 959 S.W.2d 615, 617-18 (Tex. 1997) (“[O]nce the period for granting a motion for extension of time under Rule 41(a)(2) [now Rule 26.3] has passed, a party can no longer invoke the appellate court’s jurisdiction.”). Appellant’s September 28, 2018 notice of appeal is thus untimely, and we lack

jurisdiction over this appeal. *See* Tex. R. App. P. 25.1(b) (providing that filing notice of appeal invokes appellate court's jurisdiction), *id.* R. 2 (establishing that appellate court may not alter time for perfecting appeal in civil case).

After appellee filed a motion to dismiss asserting the notice of appeal was untimely and upon review of the trial-court clerk's record, the Clerk of this Court sent appellant a letter informing him that the Court appears to lack jurisdiction over the appeal for the reasons stated above and requesting a response informing us of any basis that exists for jurisdiction. The notice further advised appellant that his failure to comply with this request could result in the dismissal of the appeal. To date, no response has been filed. Accordingly, we grant appellee's motion and dismiss the appeal for want of jurisdiction. *See id.* R. 42.3(a).

David Puryear, Justice

Before Justices Puryear, Goodwin, and Bourland

Dismissed for Want of Jurisdiction

Filed: November 28, 2018