



NUMBER 13-17-00423-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

JUAN R. RIVERA,

Appellant,

v.

BLANCA E. RIVERA,

Appellee.

**On appeal from the 319th District Court
of Nueces County, Texas.**

MEMORANDUM OPINION

**Before Justices Rodriguez, Contreras, and Benavides
Memorandum Opinion by Justice Benavides**

Appellant Juan R. Rivera, proceeding pro se, attempted to perfect an appeal from an order denying a bill of review rendered in cause number 2016-FAM-1691-G in the 319th District Court of Nueces County, Texas. The order was signed on April 13, 2017, but appellant did not file his notice of appeal until July 27, 2017. On July 28, 2017, the Clerk of this Court notified appellant that it appeared that the notice of appeal had not

been timely filed and requested correction of this defect, if it could be done, within ten days. In response, appellant filed a motion for leave for an extension of time to file his notice of appeal. Appellant contends that he received a copy of the judgment on June 5, 2017, from his attorney who “did not send [appellant] a copy of said notice until 39 days after he had received it.” Appellant asserts that he then filed a request for findings of fact and conclusions of law with the trial court. Appellant asserts that the trial court has not responded to his pleading seeking findings of fact and conclusions of law, and requests an additional thirty days to file his notice of appeal to “adequately research, prepare, and submit a thorough response to the trial court’s erroneous ruling” on the bill of review.

Absent a timely filed notice of appeal from a final judgment or recognized interlocutory order, we do not have jurisdiction over an appeal. See *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). The notice of appeal must be filed within thirty days after the judgment or other appealable order is signed. See TEX. R. APP. P. 26.1. The notice of appeal must be filed within ninety days after the judgment is signed if the appellant has filed a timely motion for new trial, motion to modify the judgment, motion to reinstate, or request for findings of fact and conclusion of law. See *id.* R. 26.1(a). A motion for extension of time to file a notice of appeal is necessarily implied when an appellant, acting in good faith, files a notice of appeal beyond the time allowed by Rule 26.1, but within the fifteen-day grace period provided by Rule 26.3 for filing a motion for extension of time. See *id.* R. 26.3; *Verburgt v. Dornier*, 959 S.W.2d 615, 617–18 (1997) (construing the predecessor to rule 26.1).

Where the appellant files a request for findings of fact and conclusions of law, the

request extends the period to file the notice of appeal if the findings and conclusions “either are required by the Rules of Civil Procedure or, if not required, could properly be considered by the appellate court.” TEX. R. APP. P. 26.1(a)(4). A timely request for findings of fact and conclusions of law extends the time to perfect the appeal when (1) the findings and conclusions are required by Texas Rule of Civil Procedure 296, or (2) the trial court conducts an evidentiary hearing and the findings and conclusions can be properly considered by the appellate court. See *id*; *IKB Indus. v. Pro-Line*, 938 S.W.2d 440, 443 (Tex. 1997); *Awde v. Dabeit*, 938 S.W.2d 31, 33 (Tex. 1997). The request does not extend the time to file the notice of appeal when findings are not appropriate. See *IKB Indus.*, 938 S.W.2d at 443. A request for findings of fact and conclusions of law must be filed within twenty days after the judgment has been signed. See TEX. R. CIV. P. 296.

Texas Rule of Civil Procedure 306a(3) requires a trial court clerk immediately to notify the parties or their attorneys, by first class mail, of the signing of an appealable order. See TEX. R. CIV. P. 306a(3). When more than twenty days have passed between the date that the trial court signs the order and the date that a party receives notice or acquires actual knowledge of the signing, the period for filing a notice of appeal may be extended to the earlier of the date the party received notice or acquired actual knowledge of the signing. TEX. R. APP. P. 4.2(a)(1); see *Pilot Travel Ctrs., LLC v. McCray*, 416 S.W.3d 168, 176 (Tex. App.—Dallas 2013, no pet.). To benefit from this extended time period, appellant must have proven, in the trial court on sworn motion and notice, the date on which he first received notice or acquired actual knowledge of the judgment and that the date was more than twenty days after the date the order was signed. See TEX. R.

CIV. P. 306a(5); TEX. R. APP. P. 4.2(a)(1),(b). Further, the trial court must have signed a written order finding the date when appellant first received notice or acquired actual knowledge that the judgment was signed. See TEX. R. APP. P. 4.2(c); *Moore Landrey, L.L.P. v. Hirsch & Westheimer, P.C.*, 126 S.W.3d 536, 540 (Tex. App.—Houston [1st Dist.] 2003, no pet.); see also *Cantu v. Longoria*, 878 S.W.2d 131, 132 (Tex. 1994).

In this case, appellant's notice of appeal was not filed within thirty days after the judgment was signed or within the fifteen-day extension period provided by Rule 26.3. See TEX. R. APP. P. 26.1; *id.* R. 26.3. Assuming without deciding that appellant's request for findings and conclusions was appropriate in this case, appellant's request for findings of fact and conclusions of law did not extend the deadline to file the notice of appeal because the request was not timely filed within twenty days after the judgment was signed. See TEX. R. APP. P. 26.1(a)(4); TEX. R. CIV. P. 296. And finally, to the extent that appellant contends that he failed to receive timely notice that the judgment was signed, appellant failed to follow the procedures required by Texas Rule of Civil Procedure 306a and Texas Rule of Appellate Procedure 4.2 to gain additional time to perfect his appeal. See TEX. R. CIV. P. 306a(5); TEX. R. APP. P. 4.2(a)(1),(b). Without the trial court order and finding required by Texas Rule of Appellate Procedure 4.2(c), the time for filing a notice of appeal of the December 15, 2016 judgment was not extended. See *Nedd–Johnson v. Wells Fargo Bank, N.A.*, 338 S.W.3d 612, 613 (Tex. App.—Dallas 2010, no pet); see also *Johnson v. Linebarger Goggan Blair & Sampson, LLP*, No. 01-15-00950-CV, 2017 WL 1173886, at *3 (Tex. App.—Houston [1st Dist.] Mar. 30, 2017, no pet. h.) (mem. op.). In the absence of the order and finding, we lack jurisdiction over his

attempted appeal. See *Mem'l Hosp. v. Gillis*, 741 S.W.2d 364, 365 (Tex. 1987) (per curiam).

The Court, having examined and fully considered the notice of appeal and the record before this Court, is of the opinion that we lack jurisdiction over this appeal. Accordingly, we DENY appellant's motion for leave for an extension of time to appeal and we DISMISS the appeal for want of jurisdiction. See TEX. R. APP. P. 42.3(a). All other pending motions, if any, are likewise DISMISSED.

GINA M. BENAVIDES,
Justice

Delivered and filed the
17th day of August, 2017.