



**NUMBER 13-23-00301-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI – EDINBURG**

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**ROY J. ELIZONDO III,**

**Appellant,**

**v.**

**ANDREW SMALLBONE,**

**Appellee.**

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**On appeal from the 148th District Court  
of Nueces County, Texas.**

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**MEMORANDUM OPINION**

**Before Justices Tijerina, Silva, and Peña  
Memorandum Opinion by Justice Peña**

On August 29, 2023, this Court issued a memorandum opinion dismissing this appeal for want of jurisdiction on grounds that the notice of appeal was not timely filed. See *Elizondo v. Smallbone*, No. 13-23-00301-CV, 2023 WL 5541118, at \*1 (Tex. App.—Corpus Christi–Edinburg Aug. 29, 2023, no pet.) (mem. op.). By order issued on

September 6, 2023, we withdrew our memorandum opinion and accompanying judgment in the interests of justice. In short, we determined that the viability of the appeal was related to a petition for writ of mandamus filed by appellant in our appellate cause number 13-23-00376-CV.

On February 9, 2024, the Clerk of this Court notified appellant that it appeared that there was no final, appealable order in this appellate cause number. See TEX. R. APP. P. 42.3. The Clerk informed appellant that the appeal would be dismissed if this defect was not cured within ten days. Appellant did not respond to the Clerk's notice or otherwise correct the defect in the appeal. See *id.* R. 42.3(a), (c).

By separate memorandum opinion issued in the petition for writ of mandamus, we have determined that the trial court has not issued a final judgment or an appealable interlocutory order, and thus the trial court retains jurisdiction over the underlying case. See *In re Elizondo*, No. 13-23-00376-CV, 2024 WL \_\_\_\_\_, at \*\_\_ (Tex. App.—Corpus Christi—Edinburg Mar. 7, 2024, orig. proceeding) (mem. op.). Accordingly, we dismiss this appeal for want of jurisdiction.

L. ARON PEÑA JR.  
Justice

Delivered and filed on the  
7th day of March, 2024.