

**NO. 12-13-00392-CV**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

***ROBERT LENHAM AND  
GEORGANNE LENHAM,  
APPELLANTS***

§ ***APPEAL FROM THE***

***V.***

§ ***COUNTY COURT AT LAW***

***GLORIA OETTING, EXECUTRIX OF  
THE ESTATE OF CHARLES LAIRD,  
APPELLEE***

§ ***CHEROKEE COUNTY, TEXAS***

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***MEMORANDUM OPINION  
PER CURIAM***

This appeal is being dismissed for want of jurisdiction pursuant to Texas Rule of Appellate Procedure 42.3(a). The trial court's judgment was signed on September 11, 2013. Under the rules of appellate procedure, the notice of appeal must be filed within thirty days after the judgment is signed. *See* TEX. R. APP. P. 26.1. But if any party timely files a motion for new trial, the notice of appeal must be filed within ninety days after the judgment is signed. TEX. R. APP. P. 26.1(a)(1). To be timely, a motion for new trial must be filed within thirty days after the judgment is signed. TEX. R. CIV. APP. P. 329b(a).

Appellants filed a motion for new trial. Because the judgment was signed on September 11, 2013, Appellants' motion for new trial was due to have been filed on or before October 11, 2013, i.e. within thirty days after the judgment was signed. However, Appellants did not file their motion for new trial until October 15, 2013. Therefore, the motion did not extend Appellants' time for filing their notice of appeal. Consequently, their notice of appeal was due to have been filed on or before October 11, 2013.

Appellants did not file their notice of appeal until December 27, 2013, and filed a motion on December 30, 2013, requesting an extension of time for filing the notice of appeal. However,

the deadline for Appellants to file their motion for extension of time was October 26, 2013. *See* TEX. R. APP. P. 26.3 (motion for extension of time to be filed within fifteen days after deadline for filing notice of appeal). Because Appellants' motion for extension of time was not filed until December 30, 2013, it must be overruled. Consequently, their notice of appeal is also untimely.

On December 31, 2013, this court notified Appellants, pursuant to Texas Rules of Appellate Procedure 37.1 and 42.3, that their notice of appeal was untimely and there was no timely motion for an extension of time to file the notice of appeal. Appellants were further informed that the appeal would be dismissed unless, on or before January 10, 2014, the information filed in the appeal was amended to show the jurisdiction of this court. The January 10, 2014 deadline has now passed, and Appellants have not shown the jurisdiction of this court.

Because this court is not authorized to extend the time for perfecting an appeal except as provided by Texas Rules of Appellate Procedure 26.1 and 26.3, Appellant's motion for extension of time to file their notice of appeal is overruled, and the appeal is *dismissed for want of jurisdiction*. *See* TEX. R. APP. P. 42.3(a).

Opinion delivered January 22, 2014.

*Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.*

(PUBLISH)



## COURT OF APPEALS

### TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

#### JUDGMENT

JANUARY 22, 2014

NO. 12-13-00392-CV

**ROBERT LENHAM AND GEORGANNE LENHAM,**

Appellants

V.

**GLORIA OETTING, EXECUTRIX OF THE ESTATE OF CHARLES LAIRD,**

Appellee

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Appeal from the County Court at Law  
of Cherokee County, Texas (Tr.Ct.No. P11743)

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THIS CAUSE came to be heard on the appellate record; and the same being considered, it is the opinion of this court that this court is without jurisdiction of the appeal, and that the appeal should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED by this court that this appeal be, and the same is, hereby **dismissed for want of jurisdiction**; and that this decision be certified to the court below for observance.

By *per curiam* opinion.

*Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.*