NO. 12-16-00168-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

JERRY E. TENNELL, APPELLANT	***§***	***APPEAL FROM THE 349TH***
V.		
TEXAS DEPARTMENT OF CRIMINAL JUSTICE, RICKY THALER, JIMMY JOE FITZGERALD, W. MORTAL, BRAD LIVINGSTON, TODD A. FOXWORTH, D. HARDIN, BOBBY CRAWFORD, OFFICER HEROD, OFFICER FRANKLIN, AND OFFICER WOODARD, APPELLEES	***§***	***JUDICIAL DISTRICT COURT***
	§	***ANDERSON COUNTY, TEXAS***

MEMORANDUM OPINION
PER CURIAM

This appeal is being dismissed for want of jurisdiction. The trial court's order dismissing Appellant's suit for want of prosecution was signed on May 21, 2014. 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 when a motion to reinstate under Texas Rule of Civil Procedure 165a is filed, the notice of appeal must be filed within ninety days after the judgment is signed. TEX. R. APP. P. 26.1(a)(3).

On October 29, 2014, 161 days after the dismissal order was signed, Appellant filed a motion to reinstate the case pursuant to Texas Rule of Civil Procedure 165a(3). To be timely, a motion to reinstate must be filed with the clerk within thirty days after the order of dismissal is signed. *See* TEX. R. CIV. P. 165a(3). Because Appellant filed his motion 161 days after the dismissal order was signed, the motion was untimely and did not extend the time for filing his notice of appeal. *See* TEX. R. APP. P. 26.1(a)(3). Therefore, Appellant's notice of appeal was

due to have been filed not later than June 20, 2014. However, Appellant did not file his notice of appeal until June 13, 2016. *See* TEX. R. APP. P. 26.1. Consequently, his notice of appeal was untimely, and this Court does not have jurisdiction of the appeal. *See* TEX. R. APP. P. 25.1(b).

On August 30, 2016, this Court notified Appellant that his notice of appeal was untimely and that there was no timely motion for extension of time to file such a motion as permitted by Texas Rule of Appellate Procedure 26.3. Appellant was further informed that the appeal would be dismissed unless, on or before September 9, 2016, the information in the appeal was amended to show this Court's jurisdiction. In response, Appellant filed a document that we have construed as a motion for extension of time to file the notice of appeal. The motion for extension of time was due on or before July 7, 2014. *See* TEX. R. APP. P. 26.3 (motion to extend time for filing notice of appeal to be filed within fifteen days after deadline for filing notice of appeal). However, Appellant filed the motion on September 12, 2016. Therefore, it was untimely and must be overruled. *See* ***id***.

A timely notice of appeal must be filed in order to invoke this court's jurisdiction. *See* TEX. R. APP. P. 25.1(b). "Once the period for granting a motion for extension of time under Rule [26.3] has passed, a party can no longer invoke the appellate court's jurisdiction." ***Verburgt v. Dorner***, 959 S.W.2d 615, 617 (Tex. 1997). Accordingly, we ***overrule*** the motion for extension of time and ***dismiss*** the appeal ***for want of jurisdiction***.

Opinion delivered September 14, 2016.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

SEPTEMBER 14, 2016

NO. 12-16-00168-CV

JERRY E. TENNELL,
Appellant
V.
TEXAS DEPARTMENT OF CRIMINAL JUSTICE, RICKY THALER, JIMMY JOE FITZGERALD, W. MORTAL, BRAD LIVINGSTON, TODD A. FOXWORTH, D. HARDIN, BOBBY CRAWFORD, OFFICER HEROD, OFFICER FRANKLIN, AND OFFICER WOODARD
Appellees

Appeal from the 349th District Court
of Anderson County, Texas (Tr.Ct.No. 349-7072)

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., Hoyle, J. and Neeley, J.