

NO. 12-21-00198-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***MICHAEL WAINRIGHT D/B/A
WAINRIGHT CONSTRUCTION,
APPELLANT***

§ ***APPEAL FROM THE***

§ ***COUNTY COURT AT LAW***

V.

***DAVID DELOUCHE,
APPELLEE***

§ ***CHEROKEE COUNTY, TEXAS***

***MEMORANDUM OPINION
PER CURIAM***

On November 1, 2021, Michael Wainright d/b/a Wainright Construction filed a notice of appeal from a judgment signed on July 3, 2021. On November 3, this Court notified Wainright that his notice of appeal does not show the jurisdiction of this Court, i.e., there was no notice of appeal filed within the time allowed by the rules of appellate procedure and no timely motion for an extension of time to file the notice of appeal. *See* TEX. R. APP. P. 26.1, 26.3. We informed Wainright that his appeal would be dismissed unless the information was amended on or before November 15 to show this Court’s jurisdiction. Wainright filed an amended notice of appeal, in which he states the judgment or order appealed from was signed on August 3, his motion for new trial was filed on September 1, and November 3 was the deadline to appeal.

However, the record reflects that while the judgment was *filed* on August 3, it was *signed* on July 3. Under Rule 26.1, the notice of appeal must be filed within “30 days after the judgment is *signed*,” or in this case, August 2. TEX. R. APP. P. 26.1 (emphasis added). The notice of appeal must be filed within ninety days “after the judgment is *signed*” if any party timely files a motion for new trial. TEX. R. APP. P. 26.1(a)(1) (emphasis added). To be timely, Wainright’s motion for new trial was due by August 2. *See* TEX. R. CIV. P. 329b(a) (motion for new trial must be filed “prior to or within thirty days after the judgment or other order

complained of is *signed*") (emphasis added). Because he filed a motion for new trial on September 1, it was untimely and did not extend the appellate deadline for filing a notice of appeal. See TEX. R. APP. P. 26.1(a)(1). Thus, Wainright's notice of appeal was due on or before August 2. TEX. R. APP. P. 26.1. But the notice of appeal was not filed until November 1, making it untimely. As this Court is not authorized to extend the time for perfecting an appeal except as provided by the Texas Rules of Appellate Procedure, we *dismiss* the appeal for *want of jurisdiction*. See TEX. R. APP. P. 42.3(a).

Opinion delivered November 17, 2021.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

NOVEMBER 17, 2021

NO. 12-21-00198-CV

MICHAEL WAINRIGHT D/B/A WAINRIGHT CONSTRUCTION,
Appellant
V.
DAVID DELOUCHE,
Appellee

Appeal from the County Court at Law
of Cherokee County, Texas (Tr.Ct.No. CV09832)

THIS CAUSE came on to be heard on the appellate record, and the same being considered, it is the opinion of this Court that it 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.