

COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT

James Shaffer v. Lyondell Chemical Co., LyondellBasell Acetyls, LLC, and Equistar Chemicals, L.P.

No. 14-23-00184-CV (Tex. App.—Houston [14th Dist.] May 16, 2023) · No. No. 14-23-00184-CV · Decided May 16, 2023

SUMMARY

The Fourteenth Court of Appeals of Texas dismissed James Shaffer’s attempted appeal for lack of jurisdiction because his notice of appeal was filed after the applicable deadline and outside the fifteen-day grace period for seeking an extension. The court denied Shaffer’s motion to extend time, rejected his due-process argument based on allegedly late notice of the judgment, and granted appellees’ motion to dismiss.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourteenth District
WRITING FOR THE COURT	Justice Jewell; Justice Hassan; Justice Wilson
JURISDICTION	Texas
DECIDED	May 16, 2023
DOCKET	No. 14-23-00184-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellees moved to dismiss an attempted appeal for lack of jurisdiction based on the untimely filing of the notice of appeal. The court of appeals denied appellant's motion to extend the filing deadline and dismissed the appeal.
STANDARD OF REVIEW	The court applied the jurisdictional requirements governing the timeliness of a notice of appeal and the mandatory prerequisites for an extension under Texas Rule of Appellate Procedure 26.3.
PRECEDENTIAL VALUE	memorandum opinion; no reporter citation identified in the source
PARTIES	James Shaffer v. Lyondell Chemical Co., LyondellBasell Acetyls, LLC, Equistar Chemicals, L.P.

TOPICS

[appellate jurisdiction](#)[final judgment rule](#)[appellate procedure](#)[civil procedure](#)

PRACTICE AREAS

appellate procedure

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QUESTIONS PRESENTED

1. Whether the court of appeals had jurisdiction when the notice of appeal was filed after the ninety-day deadline under Texas Rule of Appellate Procedure 26.1 and after the fifteen-day grace period under Rule 26.3.
2. Whether the court could extend the deadline based on alleged lack of notice of the judgment, confusion, or cases permitting late appeals in parental-termination proceedings.

HOLDINGS

1. Because Shaffer filed a timely motion for new trial, his notice of appeal was due within ninety days after the judgment was signed, or by February 27, 2023. His March 15, 2023 notice of appeal was untimely.
2. The court could not extend the deadline because Shaffer failed to satisfy either prerequisite of Rule 26.3 within the fifteen-day grace period: filing the notice of appeal in the trial court and filing a compliant motion to extend in the appellate court.
3. The untimely notice of appeal deprived the court of jurisdiction, so the court could not consider the merits and was required to dismiss the appeal.
4. The court could not grant relief based on alleged lack of notice because Texas Rule of Civil Procedure 306a(4) provides the applicable remedy, and Shaffer neither demonstrated compliance with that rule nor submitted a signed order restarting the appellate deadlines.

KEY QUOTATIONS

“Therefore, we may not extend time for Shaffer to file his untimely notice of appeal.” (at 2)

“An appellant’s failure to timely file a notice of appeal deprives this court of jurisdiction.” (at 2)

“Accordingly, the appeal is ordered dismissed.” (at 3)

FACTUAL BACKGROUND

The trial court signed the judgment on November 29, 2022. Shaffer filed a timely motion for new trial, which extended the deadline for filing his notice of appeal to February 27, 2023. He filed the notice of appeal on March 15, 2023—one day after the fifteen-day grace period expired—and filed his motion to extend in the court of appeals on March 20, 2023.

PROCEDURAL HISTORY

The 190th District Court of Harris County signed the judgment on November 29, 2022. Shaffer filed a motion for new trial on December 9, 2022, the trial court denied it on January 25, 2023, and Shaffer filed his notice of appeal on March 15, 2023. The court of appeals concluded that the notice was filed after the deadline under Texas Rule of Appellate Procedure 26.1 and outside the fifteen-day grace period under Rule 26.3, leaving the court without jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Verburgt v. Dorner, 959 S.W.2d 615, 617–18 (1997)
- A.G. v. Tex. Dep't of Fam. & Protective Servs., No. 03-22-00502-CV, 2022 WL 10714200 (Tex. App.—Austin Oct. 19, 2022, no pet.)
- In re D.P.G., No. 05-20-00652-CV, 2021 WL 2472717 (Tex. App.—Dallas June 17, 2021, no pet.)
- Ridge v. Ridge, 658 S.W.3d 427, 431 (Tex. App.—Houston [14th Dist.] 2022, no pet.)

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