

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

civil procedure

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.)

OPINION

PER CURIAM.

Appellees' Motion to Dismiss Granted; Dismissed and Memorandum Opinion filed May 16, 2023. In The Fourteenth Court of Appeals NO. 14-23-00184-CV JAMES SHAFFER, Appellant V. LYONDELL CHEMICAL CO., LYONDELLBASELL ACETYLS, LLC, AND EQUISTAR CHEMICALS, L.P., Appellees On Appeal from the 190th District Court Harris County, Texas Trial Court Cause No. 2022-09420 MEMORANDUM OPINION This is an attempted appeal from a judgment signed November 29, 2022.

Appellant, James Shaffer, filed a timely motion for new trial on December 9, 2023. The trial court denied Shaffer's motion for new trial on January 25, 2023, and Shaffer filed his notice of appeal on March 15, 2023. Contending that appellant's notice of appeal was untimely, appellees have filed in our court a motion to dismiss this appeal for lack of jurisdiction.

When an appellant has filed a timely post-judgment motion of a type identified in rule 26.1(a), a notice of appeal must be filed within 90 days after the date the judgment is signed. See Tex. R. App. P. 26.1(a). Thus, Shaffer's notice of appeal was due February 27, 2023. Shaffer's notice of appeal was not filed timely.

The appellate rules allow an appellate court to extend the time to file a notice of appeal. Tex. R. App. P. 26.3. An appellate court is authorized to do so if, within fifteen days after the original deadline for filing the notice of appeal, the appellant (1) files in the trial court a notice of appeal and (2) files in the appellate court a motion complying with rule 10.5(b).

Id. Fifteen days after February 27, 2023 was Tuesday March 14, 2023. Shaffer filed a notice of appeal in the trial court on March 15, 2023; and he filed a motion to extend time to file a notice of appeal in our court on March 20, 2023. Shaffer did not comply with either prerequisite in rule 26.3.

Therefore, we may not extend time for Shaffer to file his untimely notice of appeal. A motion to extend time is necessarily implied when an appellant, acting in good faith, files a notice of appeal beyond the time allowed by Texas Rule of Appellate Procedure 26.1, but within the fifteen day grace period provided by Rule 26.3 for filing a motion to extend time.

See *Verburgt v. Dorner*, 959 S.W.2d 615, 617–18 (1997) (construing the predecessor to Rule 26). This principle is not implicated here, however, because Shaffer’s notice of appeal was filed one day after the fifteen-day grace period expired..

In his motion to extend time to file a notice of appeal, Shaffer argues that he filed the notice of appeal late due to confusion. Assuming as much, we are nonetheless unauthorized by the rules of procedure to grant relief under the circumstances presented.

In particular, Shaffer argues that he did not receive notice of the November 29, 2022 judgment, and he will be denied fundamental due 2 process unless we extend the time for him to file his notice of appeal. We disagree. If Shaffer did not receive timely notice of the judgment from the district clerk, the rules of procedure provide a remedy. Tex. R. Civ. P. 306a(4).

Shaffer has not demonstrated that he has complied with this rule nor has he filed a signed order with our court establishing that the appellate deadlines have been restarted under this rule. Appellant also cites two parental-termination appeals in which the Dallas and Austin Courts of Appeals allowed for late notices of appeal. See *A.G. v Tex. Dept. of Fam. & Protective Servs.*, No. 03-22-00502-CV, 2022 WL 10714200 (Tex.

App.—Austin Oct. 19, 2022, no pet.) (allowing for late notice of appeal where counsel was not appointed until “well beyond” the deadline for filing a notice of appeal); *In re D.P.G.*, No. 05-20-00652-CV, 2021 WL 2472717 (Tex. App.—Dallas June 17, 2021, no pet.) (allowing for late notice of appeal where counsel did not receive notice of appointment until after the deadline for filing a notice of appeal).

These cases are distinguishable and thus inapplicable here because both cases involved the attempted appeal of judgments terminating parental rights and counsel either was not appointed or did not have notice of appointment until the appellate deadline had expired.

We decline to extend those court’s holdings to the instant appeal. An appellant’s failure to timely file a notice of appeal deprives this court of jurisdiction. *Ridge v. Ridge*, 658 S.W.3d 427, 431 (Tex. App.—Houston [14th Dist.] 2022, no pet.).

We are without jurisdiction to consider the merits of this appeal. We deny appellant’s motion to extend time to file a notice of appeal and grant appellees’ motion to dismiss. Accordingly, the appeal is ordered dismissed. PER CURIAM 3 Panel consists of Justices Jewell, Hassan, and Wilson. 4

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