

FOURTH COURT OF APPEALS OF TEXAS

Ammonite Oil & Gas Corporation v. Railroad Commission of Texas

Ammonite Oil & Gas · No. 04-20-00465-CV · Decided October 20, 2020

SUMMARY

The Texas Fourth Court of Appeals ordered Ammonite Oil & Gas Corporation to show cause why its appeal should not be dismissed for lack of jurisdiction. The court concluded that the notice of appeal was filed after the applicable deadline and that the period for seeking an extension had expired.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas
WRITING FOR THE COURT	Beth Watkins
JURISDICTION	Texas
DECIDED	October 20, 2020
DOCKET	04-20-00465-CV
DISPOSITION	other
PROCEDURAL POSTURE	The appellant filed an untimely notice of appeal from a final appealable order, and the court issued an order requiring the appellant to show cause why the appeal should not be dismissed for lack of jurisdiction.
STANDARD OF REVIEW	The court treated timeliness of the notice of appeal as a jurisdictional issue.
PRECEDENTIAL VALUE	Published Texas intermediate appellate court order
PARTIES	Ammonite Oil & Gas Corporation v. Railroad Commission of Texas

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 appellant filed its notice of appeal after the deadline prescribed by Texas Rule of Appellate Procedure 26.1(a) and after the period for seeking an extension under Rule 26.3 had expired.
2. Whether appellant should be required to show cause why the appeal should not be dismissed for lack of jurisdiction.

HOLDINGS

1. Once the period for obtaining an extension of time to file a notice of appeal under Texas Rule of Appellate Procedure 26.3 has expired, a party can no longer invoke the appellate court's jurisdiction by filing a notice of appeal.
2. When the notice of appeal appears untimely and the extension period has expired, the court may order the appellant to show cause why the appeal should not be dismissed for lack of jurisdiction.

KEY QUOTATIONS

“ “[O]nce 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.” ”

FACTUAL BACKGROUND

The trial court signed a final appealable order on June 22, 2020. The appellant did not file its notice of appeal until September 17, 2020, after both the ordinary deadline for filing the notice of appeal and the deadline for seeking an extension had expired.

PROCEDURAL HISTORY

The 36th Judicial District Court of McMullen County signed a final appealable order on June 22, 2020. Because no postjudgment motion or request for findings was contained in the clerk's record, the notice of appeal was due July 22, 2020, and any extension motion was due August 6, 2020. Appellant filed its notice of appeal on September 17, 2020. The court of appeals ordered appellant to show cause by October 30, 2020, why the appeal should not be dismissed.

DISPOSITION

other

CASES CITED

- Verburgt v. Dorner, 959 S.W.2d 615, 617 (Tex. 1997)

OPINION

PER CURIAM.

FILE COPY COURT OF APPEALS SANDEE BRYAN MARION FOURTH COURT OF APPEALS DISTRICT MICHAEL A. CRUZ, CHIEF JUSTICE CADENA-REEVES JUSTICE

CENTER CLERK OF COURT REBECA C. MARTINEZ 300 DOLOROSA, SUITE 3200
PATRICIA O. ALVAREZ SAN ANTONIO, TEXAS 78205-3037 LUZ ELENA D. CHAPA
WWW.TXCOURTS.GOV/4THCOA.ASPX TELEPHONE IRENE RIOS (210) 335-2635 BETH
WATKINS LIZA A. RODRIGUEZ FACSIMILE NO. JUSTICES (210) 335-2762 October 20,
2020 Shelly M. Doggett J. Bruce Bennett Office of the Attorney General of Cardwell, Hart &
Bennett, L.L.P.

Texas 807 Brazos, Suite 1001 P.O. Box 12548 Austin, TX 78701-2553 Austin, TX 78711 *
DELIVERED VIA E-MAIL * * DELIVERED VIA E-MAIL * Jane Webre John Henderson
Bennett Scott Douglass & McConnico, OSBORN, MARSLAND & LLP HARGROVE 303
Colorado Street, Suite 2400 515 Congress Ave., Suite 2450 Austin, TX 78701-2589 Austin, TX
78701-3558 * DELIVERED VIA E-MAIL * * DELIVERED VIA E-MAIL * RE: Court of
Appeals Number: 04-20-00465-CV Trial Court Case Number: M-18-0003-CV-A Style: Ammonite
Oil & Gas Corporation v. Railroad Commission of Texas Enclosed please find the order which the
Honorable Court of Appeals has issued in reference to the above styled and numbered cause.

If you should have any questions, please do not hesitate to contact me. Very truly yours, Michael
A. Cruz, Clerk of Court _____ Monica Rivera Deputy Clerk, Ext.
53855 cc: Mattie Sadovsky (DELIVERED VIA E-MAIL) Douglas J. Dashiell (DELIVERED VIA
E-MAIL) FILE COPY Fourth Court of Appeals San Antonio, Texas October 20, 2020 No. 04-20-
00465-CV AMMONITE OIL & GAS CORPORATION, Appellant v. RAILROAD
COMMISSION OF TEXAS, Appellee From the 36th Judicial District Court, McMullen County,
Texas Trial Court No. M-18-0003-CV-A Honorable Janna K. Whatley, Judge Presiding ORDER
The trial court signed a final appealable order on June 22, 2020.

Because the clerk's record does not contain a motion for new trial, motion to modify the judgment,
motion for reinstatement, or request for findings of fact and conclusions of law, the notice of
appeal was due by July 22, 2020. See TEX. R. APP. P. 26.1(a). A motion for extension of time to
file the notice of appeal was due by August 6, 2020. See TEX. R. APP.

P. 26.3. Appellant filed its notice of appeal on September 17, 2020. "[O]nce 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. See *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997)
(construing the predecessor to Rule 26).

Because the notice of appeal was untimely filed, we ORDER appellant to show cause why this
appeal should not be dismissed for lack of jurisdiction by October 30, 2020. See *id.* If appellants
fail to respond to this order by the date ordered, this appeal will be dismissed for lack of
jurisdiction. See TEX. R. APP. P. 42.3. If a supplemental clerk's record is required, appellant must
ask the trial court clerk to prepare one and must notify the clerk of this court that such a request
was made.

All other appellate deadlines are suspended until further order of this court. FILE COPY
_____ Beth Watkins, Justice IN WITNESS WHEREOF, I have
hereunto set my hand and affixed the seal of the said court on this 20th day of October, 2020.
_____ MICHAEL A. CRUZ, Clerk of Court