

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

Jeffrey Lynn Lewis v. State

No. 2-10-046-CV · No. No. 2-10-046-CV · Decided April 8, 2010

SUMMARY

The Texas Court of Appeals, Second District, dismissed Jeffrey Lynn Lewis's appeal for want of jurisdiction because his notice of appeal was filed more than a year after the deadline. The court held that neither a timely notice of appeal nor a timely extension request was filed.

CASE DETAILS

COURT	Court of Appeals of Texas, Second District, Fort Worth
WRITING FOR THE COURT	Walker, J.; McCoy, J.; Meier, J.
JURISDICTION	Texas
DECIDED	April 8, 2010
DOCKET	No. 2-10-046-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Lewis appealed from a final judgment entered by the 211th District Court of Denton County. The court of appeals questioned its jurisdiction because the notice of appeal was untimely and dismissed the appeal for want of jurisdiction.
STANDARD OF REVIEW	The court independently determined whether it had appellate jurisdiction based on the timeliness of the notice of appeal and any extension request.
PRECEDENTIAL VALUE	Nonprecedential memorandum opinion
PARTIES	Jeffrey Lynn Lewis v. The State of Texas

TOPICS

appellate jurisdiction

appellate procedure

final judgment rule

civil procedure

PRACTICE AREAS

Appellate procedure

Civil procedure

QUESTIONS PRESENTED

1. Whether the court of appeals had jurisdiction over an appeal when the notice of appeal was filed more than a year after the applicable deadline.
2. Whether Lewis's request for an extension of time could preserve appellate jurisdiction despite being untimely and procedurally defective.

HOLDINGS

1. The court lacked appellate jurisdiction because Lewis did not timely file his notice of appeal.
2. Lewis's request for an extension of time did not preserve jurisdiction because it was filed more than a year after the fifteen-day deadline and was procedurally defective.

KEY QUOTATIONS

“The time for filing a notice of appeal is jurisdictional in this court, and absent a timely-filed notice of appeal or extension request, we must dismiss the appeal.”

FACTUAL BACKGROUND

The trial court signed a final judgment on October 17, 2008. Lewis did not file a motion for new trial, making his notice of appeal due November 17, 2008. He filed the notice of appeal on February 8, 2010, and later filed a request for an extension of time that was more than a year late and lacked the required filing fee, certificate of conference, and certificate of service.

PROCEDURAL HISTORY

The trial court signed its final judgment on October 17, 2008. Because Lewis did not file a motion for new trial, his notice of appeal was due November 17, 2008, but he did not file it until February 8, 2010. After the court notified him that the appeal might be dismissed, Lewis filed a response and a request for an extension of time on March 9, 2010; the court found the request defective and dismissed the appeal.

DISPOSITION

dismissed

CASES CITED

- Jones v. City of Houston, 976 S.W.2d 676, 677 (Tex. 1998)
- Verburgt v. Dorner, 959 S.W.2d 615, 617 (Tex. 1997)
- Chilkewitz v. Winter, 25 S.W.3d 382, 383-84 (Tex. App.—Fort Worth 2000, no pet.)

OPINION

PER CURIAM.

COURT OF APPEALS SECOND DISTRICT OF TEXAS FORT WORTH NO. 2-10-046-CV
JEFFREY LYNN LEWIS APPELLANT V. THE STATE OF TEXAS APPELLEE FROM THE

211TH DISTRICT COURT OF DENTON COUNTY MEMORANDUM OPINION[1] On March 8, 2010, we notified Appellant Jeffrey Lynn Lewis that we were concerned that this court may not have jurisdiction over this appeal because it appeared that his notice of appeal was not timely filed.

We stated that the appeal might be dismissed for want of jurisdiction unless Lewis or any party desiring to continue the appeal filed with the court a response showing grounds for continuing the appeal. See Tex. R. App. P. 42.3(a), 44.3. Lewis filed a response to our jurisdiction letter stating that the State did not notify him of the default judgment until late in January of 2010[@] and that he had immediately filed a request for permission to appeal.

However, Lewis's ARequest For Extension Of Time To File An Appeal,[@] which was filed on March 9, 2010, is defective because it was filed over a year after the fifteen-day deadline for filing a motion for extension of time to file a notice of appeal and because he failed to pay the filing fee and failed to provide a certificate of conference and a certificate of service.

See Tex. R. App. P. 26.3. The trial court's final judgment was signed on October 17, 2008. Lewis did not file a motion for new trial, so his notice of appeal was due November 17, 2008. Lewis, however, did not file his notice of appeal until February 8, 2010.

The time for filing a notice of appeal is jurisdictional in this court, and absent a timely-filed notice of appeal or extension request, we must dismiss the appeal. See Tex. R. App. P. 2, 25.1(b), 26.3; *Jones v. City of Houston*, 976 S.W.2d 676, 677 (Tex. 1998); *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997); *Chilkewitz v. Winter*, 25 S.W.3d 382, 383B84 (Tex.

App.CFort Worth 2000, no pet.). Accordingly, we dismiss the appeal for want of jurisdiction. See Tex. R. App. P. 42.3(a), 43.2(f). PER CURIAM PANEL: WALKER, MCCOY, and MEIER, JJ. DELIVERED: April 8, 2010 [1]See Tex. R. App. P. 47.4.