

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

Elena Garza as Mother and Next Friend of Nathali Selena Garcia v. Juan Garcia, Juana Fuentes, Alberto Garcia, Jose Salvador Garcia and Hermalinda Garcia

Garza v. Garcia · No. 01-12-00866-CV · Decided December 13, 2012

SUMMARY

The First Court of Appeals of Texas dismissed the appeal for want of jurisdiction because the notice of appeal was filed after the applicable deadline. The court held that the appellant's untimely motion for new trial did not extend the deadline for filing the notice of appeal.

CASE DETAILS

COURT	Court of Appeals for the First District of Texas
WRITING FOR THE COURT	Justice Keyes; Justice Massengale; Justice Brown
JURISDICTION	Texas
DECIDED	December 13, 2012
DOCKET	01-12-00866-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellant attempted to appeal from a probate court judgment. Appellees moved to dismiss for want of jurisdiction based on the untimely notice of appeal.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential treatment not otherwise specified in the opinion.
PARTIES	Elena Garza, as Mother and Next Friend of Nathali Selena Garcia v. Juan Garcia, Juana Fuentes, Alberto Garcia, Jose Salvador Garcia, Hermalinda Garcia

TOPICS

[appellate jurisdiction](#) [appellate procedure](#) [final judgment rule](#) [motion for new trial](#) [probate procedure](#)

PRACTICE AREAS

[appellate procedure](#) [civil procedure](#) [probate](#)

QUESTIONS PRESENTED

1. Whether the untimely motion for new trial extended the deadline for filing the notice of appeal.
2. Whether the Court of Appeals had jurisdiction over an appeal from a final judgment when the notice of appeal was filed after the applicable deadline.

HOLDINGS

1. A motion for new trial filed more than 30 days after the judgment is signed is untimely and does not extend the deadline for filing a notice of appeal.
2. A notice of appeal filed after the applicable deadline does not invoke the appellate court's jurisdiction, requiring dismissal of the appeal for want of jurisdiction.

KEY QUOTATIONS

“Without a timely filed notice of appeal, this Court lacks jurisdiction over the appeal.” (at 2)

FACTUAL BACKGROUND

The trial court signed a final judgment on May 29, 2012. Appellant filed a motion for new trial on June 29, 2012, although the motion was due by June 28, 2012. She filed her notice of appeal on August 30, 2012, and certified that the motion for new trial had been served and filed on June 29, making the mailbox rule inapplicable.

PROCEDURAL HISTORY

The Probate Court No. 2 of Harris County signed the final judgment on May 29, 2012. Appellant filed a motion for new trial on June 29, 2012, one day after the deadline, and filed her notice of appeal on August 30, 2012. The Court of Appeals granted appellees' motion and dismissed the appeal for want of jurisdiction.

DISPOSITION

dismissed

OPINION

PER CURIAM.

Opinion issued December 13, 2012 In The Court of Appeals For The First District of Texas NO. 01-12-00866-CV ELENA GARZA, AS MOTHER AND NEXT FRIEND OF NATHALI SELENA GARCIA, Appellant V. JUAN GARCIA, JUANA FUENTES, ALBERTO GARCIA, JOSE SALVADOR GARCIA, AND HERMALINDA GARCIA, Appellees On Appeal from the Probate Court No. 2 Harris County, Texas Trial Court Cause No. 387820 MEMORANDUM OPINION Appellant, Elena Garza, as mother and next friend of Nathali Selena Garcia, attempts to appeal from the trial court's judgment signed May 29, 2012.

Appellees, Juan Garcia, Juana Fuentes, Alberto Garcia, Jose Salvador Garcia, and Hermalinda Garcia, have filed an “Opposed Motion to Dismiss for Want of Jurisdiction.” We grant appellees’ motion and dismiss the appeal. Generally, a notice of appeal is due within thirty days after the judgment is signed. See TEX. R. APP. P. 26.1.

The deadline to file a notice of appeal is extended to 90 days after the date the judgment is signed if any party timely files a motion for new trial, motion to modify the judgment, motion to reinstate, or, under certain circumstances, a request for findings of fact and conclusions of law. See TEX. R. APP. P. 26.1(a).

To be considered timely, a motion for new trial must be filed within 30 days after the judgment is signed. TEX. R. CIV. P. 329b(a). The record reflects that the trial court signed the final judgment on May 29, 2012. A motion for new trial was due by June 28, 2012.

The record shows that appellant untimely filed a motion for new trial on June 29, 2012.¹ See *id.* Because her motion for new trial was untimely filed, it did not extend the deadline for filing the notice of appeal. See TEX. R. APP. P. 26.1(a)(1). Appellant’s notice of appeal remained due by June 28, 2012. Appellant did not file a notice of 1 Because appellant certified that the motion for new trial was served on opposing counsel on June 29, 2012 “and the original was immediately filed with the court” and because appellant stated, in her motion to extend time to file the notice of appeal, that the motion for new trial was filed on June 29, 2012, the “mailbox rule” is inapplicable to this case.

See TEX. R. APP. P. 9.2(b). 2 appeal until August 30, 2012. Appellant’s notice of appeal was untimely filed. Without a timely filed notice of appeal, this Court lacks jurisdiction over the appeal. See TEX. R. APP. P. 25.1.

Accordingly, we GRANT appellee’s motion and DISMISS the appeal for want of jurisdiction. See TEX. R. APP. P. 43.2(f). We dismiss any pending motions as moot. PER CURIAM Panel consists of Justices Keyes, Massengale, and Brown. 3