

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

Richard A. Kiesling, Kimberly D. Kiesling, Bobby R. Kiesling, Betty A. Kiesling, Donald W. Kiesling, and Kathy A. Kiesling v. McCoy Corporation

No. 03-25-01000-CV (Tex. App.—Austin Jan. 16, 2026) · No. No. 03-25-01000-CV · Decided January 16, 2026

SUMMARY

The Texas Court of Appeals, Third District, dismissed the Kieslings’ appeal for want of jurisdiction because their motion for new trial and notice of appeal were filed after the applicable deadlines. The court granted McCoy Corporation’s motion to dismiss and concluded that the appellate timetable could not be extended.

CASE DETAILS

COURT	Texas Court of Appeals, Third District, at Austin
WRITING FOR THE COURT	Maggie Ellis; Justice Triana; Justice Kelly
JURISDICTION	Texas Court of Appeals, Third District, at Austin
DECIDED	January 16, 2026
DOCKET	No. 03-25-01000-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	McCoy Corporation moved to dismiss the appeal for want of jurisdiction because the Kieslings filed an untimely notice of appeal from the trial court's August 22, 2025 final judgment.
STANDARD OF REVIEW	The appellate court independently determined whether it had jurisdiction over the appeal based on compliance with the appellate timetable.
PRECEDENTIAL VALUE	Published memorandum opinion; the source metadata identifies the opinion as published.
PARTIES	Richard A. Kiesling, Kimberly D. Kiesling, Bobby R. Kiesling, Betty A. Kiesling, Donald W. Kiesling, Kathy A. Kiesling v. McCoy Corporation

TOPICS

appellate jurisdiction

appellate procedure

final judgment rule

motion for new trial

civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the Kieslings' untimely motion for new trial extended the deadline for filing their notice of appeal.
2. Whether the appellate court had authority to extend the notice-of-appeal deadline when the notice was filed after the fifteen-day grace period.

HOLDINGS

1. An untimely motion for new trial does not extend the deadline for filing a notice of appeal or extend the trial court's plenary power.
2. The appellate court could not extend the filing deadline because the Kieslings filed their notice of appeal after the fifteen-day grace period had expired.

KEY QUOTATIONS

“Because the Kieslings’ motion for new trial was inoperative to extend the appellate timetable, the Kieslings’ notice of appeal was due on September 22, 2025.” (2)

“The Kieslings did not file their notice of appeal until November 21, 2025, well after this grace period already expired, and thus, we may not extend the time to file the notice of appeal in this case.” (2)

“We dismiss this appeal for want of jurisdiction.” (2)

FACTUAL BACKGROUND

The trial court signed its final judgment on August 22, 2025. The Kieslings filed a motion for new trial on September 24, 2025, after the September 22 deadline, and filed their notice of appeal on November 21, 2025. They did not file a response to McCoy Corporation's motion to dismiss.

PROCEDURAL HISTORY

The 433rd District Court of Comal County signed a final judgment on August 22, 2025. The Kieslings filed a motion for new trial on September 24, 2025, two days after the deadline, and filed their notice of appeal on November 21, 2025. McCoy moved to dismiss the appeal for lack of jurisdiction, and the appellate court granted the motion and dismissed the appeal.

DISPOSITION

dismissed

CASES CITED

- Mitschke v. Borromeo, 645 S.W.3d 251, 253 (Tex. 2022)
- Dillard v. McCain, 324 S.W.2d 163, 163 (Tex. 1959) (per curiam)
- Coffee v. Coffee, No. 03-16-00466-CV, 2016 WL 4272122, at *1 (Tex. App.—Austin Aug. 11, 2016, no pet.) (mem. op.)
- Verburgt v. Dorner, 959 S.W.2d 615, 617–18 (Tex. 1997)

OPINION

Richard A. Kiesling, Kimberly D. Kiesling, Bobby R. Kiesling, Betty A. Kiesling, Donald W. Kiesling, and Kathy A. Kiesling v. McCoy Corporation

PER CURIAM.

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-25-01000-CV

Richard A. Kiesling, Kimberly D. Kiesling, Bobby R. Kiesling, Betty A. Kiesling, Donald W. Kiesling, and Kathy A. Kiesling, Appellants v. McCoy Corporation, Appellee

FROM THE 433RD DISTRICT COURT OF COMAL COUNTY

NO. C2020-0613B, THE HONORABLE DIB WALDRIP, JUDGE PRESIDING

MEMORANDUM OPINION

This case is before us on appellee McCoy Corporation’s motion to dismiss for want of jurisdiction appellants’ Richard A. Kiesling, Kimberly D. Kiesling, Bobby R. Kiesling, Betty A. Kiesling, Donald W. Kiesling, and Kathy A. Kiesling (collectively, the Kieslings) attempt to appeal the trial court’s August 22, 2025 judgment. Unless circumstances not present here exist, a party has thirty days from the date the trial court signs a final judgment to file a motion for new trial. Tex. R. Civ. P. 329b(a). A timely filed motion for new trial extends a trial court’s plenary power over its judgment and extends the time to file a notice of appeal. Mitschke v. Borromeo, 645 S.W.3d 251, 253 (Tex. 2022). On the other hand, a tardy motion for new trial does not operate to extend the appellate timetable. See Dillard v. McCain, 324 S.W.2d 163, 163 (Tex. 1959) (per curiam); Coffee v. Coffee, No. 03-16-00466-CV, 2016 WL 4272122, at *1 (Tex. App.—Austin Aug. 11, 2016, no pet.) (mem. op.) (“[The] untimely motion for new trial did not extend the filing deadline for Coffee’s notice of appeal, and the time to seek an extension for filing the notice of appeal has expired.”). Here, because the trial court’s final judgment was signed on August 22, 2025, the Kieslings had until September 22, 2025, to file their motion for new trial. See Tex. R. Civ. P. 4, 329b(a). However, they did not file their motion for new trial until September 24, 2025, after the deadline had expired. Because the Kieslings’ motion for new trial was inoperative to extend the appellate timetable, the Kieslings’ notice of appeal was due on September 22, 2025. See Tex. R. App. P. 26.1; Coffee, 2016 WL 4272122, at *1. We may only “extend the time to file the notice of appeal if, within 15 days after the deadline for filing a notice of appeal the party: (a) files in the trial court the notice of appeal; and (b) files in the appellate court a motion complying with Rule

10.5(b).” Tex. R. App. P. 26.3. 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 Rule of Appellate Procedure 26.1 but within the fifteen-day grace period provided by Rule 26.3. *Verburgt v. Dorner*, 959 S.W.2d 615, 617–18 (Tex. 1997). The Kieslings did not file their notice of appeal until November 21, 2025, well after this grace period already expired, and thus, we may not extend the time to file the notice of appeal in this case. See *Coffee*, 2016 WL 4272122, at *1. On December 30, 2025, the McCoy Corporation filed their motion to dismiss, citing our lack of jurisdiction over this appeal due to the Kieslings’ untimely notice of appeal. The Kieslings have not filed a response to the McCoy Corporation’s motion. We conclude that 2 the McCoy Corporation’s motion to dismiss is meritorious and we grant it. We dismiss this appeal for want of jurisdiction. See Tex. R. App. P. 42.3(a). _____ Maggie Ellis, Justice Before Justices Triana, Kelly, and Ellis Dismissed for Want of Jurisdiction on Appellee’s Motion Filed: January 16, 2026 3