

DISMISS and Opinion Filed June 12, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-20-00490-CV

**LUTHER JOHNSON, JR., Appellant
V.
KAY JOHNSON, Appellee**

**On Appeal from the 303rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-18-17346**

MEMORANDUM OPINION

Before Justices Myers, Partida-Kipness, and Reichel
Opinion by Justice Partida-Kipness

The Court questioned its jurisdiction over this appeal because it appeared the notice of appeal was untimely. We instructed appellant to file, by June 5, 2020, a letter brief addressing the jurisdictional issue and cautioned him that failure to comply may result in dismissal of the appeal without further notice. As of today's date, appellant has not complied.

When a party does not file a timely post-judgment motion extending the appellate timetable, a notice of appeal is due thirty days or, with an extension motion, forty-five days after the date the judgment is signed. *See* TEX. R. APP. P.

26.1; 26.3. Without a timely filed notice of appeal, this Court lacks jurisdiction. *See id.* 25.1(b).

The trial court signed the judgment on February 6, 2020. Appellant did not file a post-judgment motion extending the appellate timetable. Accordingly, the notice of appeal was due on Monday, March 9, 2020. *See id.* 4.1(a); 26.1. Appellant filed a notice of appeal on April 23, 2020, forty-five days past the due date.¹

Because appellant's notice of appeal was untimely, we dismiss the appeal for want of jurisdiction. *See id.* 42.3(a).

/Robbie Partida-Kipness/
ROBBIE PARTIDA-KIPNESS
JUSTICE

200490F.P05

¹ We note that in his notice of appeal, appellant states that the judgment “was not provided to [appellant] or his attorney until April 14, 2020.” The procedure to gain additional time in this circumstance is governed by Texas Rule of Civil Procedure 306a(5), which requires a party receiving actual knowledge more than twenty days after the signing of the judgment, to establish the date of actual knowledge in the trial court by motion and with notice. *See id.* 4.2(b); TEX. R. CIV. P. 306a(5). Following a hearing, the trial court must sign a written order finding the date when the party first received notice. *See* TEX. R. APP. P. 4.2(c). The record before this Court does not contain the required rule 306a motion or written order establishing the date of actual knowledge.



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

LUTHER JOHNSON, JR., Appellant

No. 05-20-00490-CV V.

KAY JOHNSON, Appellee

On Appeal from the 303rd Judicial District Court, Dallas County, Texas Trial Court Cause No. DF-18-17346. Opinion delivered by Justice Partida-Kipness. Justices Myers and Reichert participating.

In accordance with this Court's opinion of this date, the appeal is **DISMISSED**.

It is **ORDERED** that appellee KAY JOHNSON recover her costs of this appeal from appellant LUTHER JOHNSON, JR.

Judgment entered this 12th day of June, 2020.