

Dismiss and Opinion Filed April 23, 2021



In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-20-00957-CV

DELFRED HARPER, Appellant
V.
RUSTY GIBSON, Appellee

On Appeal from the 160th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-19-03812

MEMORANDUM OPINION

Before Justices Schenck, Reichek, and Carlyle
Opinion by Justice Carlyle

Delfred Harper appeals from the trial court’s June 17, 2020 order of dismissal for want of prosecution. We questioned our jurisdiction over this appeal because appellant’s October 30, 2020 notice of appeal did not appear to be timely. *See Brashear v. Victoria Gardens of McKinney, L.L.C.*, 302 S.W.3d 542, 545–46 (Tex. App.—Dallas 2009, no pet.) (timely filing of notice of appeal is jurisdictional).

“Simplicity and certainty in appellate procedure are nowhere more important than in determining the time for perfecting appeal.” *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 205 (Tex. 2001). To that end, the Texas Rules of Appellate Procedure

provide rules for calculating the deadline for filing a notice of appeal from the date the final judgment is signed. *See id.*; TEX. R. APP. P. 26.1. When a post-judgment motion such as a motion to reinstate or motion for new trial is filed, the deadline is ninety days, or with an extension motion 105 days, from the date the judgment is signed. *See* TEX. R. APP. P. 26.1(a), 26.3. An order denying a post-judgment motion such as a motion to reinstate or motion for new trial is not separately appealable from the final judgment and does not start the appellate timetable. *See Jarrell v. Bergdorf*, 580 S.W.3d 463, 465 (Tex. App.—Houston [14th Dist.] 2019, no pet.).

Here, appellant filed the notice of appeal within thirty days of the order denying the motion to reinstate but 135 days after the order of dismissal. Because appellant's notice appeal was not filed within 105 days of the order of dismissal, it was not timely, we lack jurisdiction over this appeal, and we dismiss this appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a).

/Cory L. Carlyle/

CORY L. CARLYLE
JUSTICE

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

JUDGMENT

DELFRED HARPER, Appellant

No. 05-20-00957-CV V.

RUSTY GIBSON, Appellee

On Appeal from the 160th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-19-03812.
Opinion delivered by Justice Carlyle.
Justices Schenck and Reichek
participating.

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

It is **ORDERED** that appellee RUSTY GIBSON recover his costs of this
appeal from appellant DELFRED HARPER.

Judgment entered this 23rd day of April, 2021.