

Dismissed and Opinion filed July 13, 2000.



In The

Fourteenth Court of Appeals

NO. 14-00-00575-CV

MARS TRAVEL & TOURS, INC., Appellant

V.

DAMON'S ASPHALT PAVING, INC., Appellee

**On Appeal from the 11th District Court
Harris County, Texas
Trial Court Cause No. 99-40823**

O P I N I O N

This is an attempted appeal from a judgment, signed March 1, 2000. Appellant filed an untimely motion for new trial on April 18, 2000. Appellant's notice of appeal was filed May 15, 2000.

The notice of appeal must be filed within thirty days after the judgment is signed when appellant has not filed a timely motion for new trial, motion to modify the judgment, motion to reinstate, or a request for findings of fact and conclusions of law. *See* TEX. R. APP. P. 26.1.

On June 26, 2000, notification was transmitted to all parties of the Court's intent to dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a). Appellant's response fails to demonstrate that this Court has jurisdiction to entertain the appeal. Appellant admits it untimely filed its motion for new trial, but contends that TEX. R. CIV. P. 306a(4) provides an extension of time to file a motion for new trial when notice of a final judgment is received late. Appellant misunderstands the rule. Rule 306a(4) allows a party to extend the time to file a post-judgment motions if the procedure in section (5) is followed. *See* TEX. R. CIV. P. 306a(5). Under Rule 306a(5), a party who claims late notice of a final judgment must prove in the trial court, on sworn motion and notice, the date the party or his attorney first either received notice or acquired actual notice of the judgment and that this date was more than 20 days after judgment was signed. *See id.*

The record does not include a sworn motion by appellant regarding late notice of the judgment. Instead, appellant merely filed an untimely motion for new trial in which it claims late notice and the alleged implied extension in Rule 306a(4). This does not meet the requirements of proving late notice under Rule 306a(5). Furthermore, the trial judge made no finding that appellant received late notice of the judgment. Accordingly, the deadline for filing the notice of appeal was not extended by the filing of the untimely motion for new trial.

Because the notice of appeal was not timely filed, the appeal is ordered dismissed.

PER CURIAM

Judgment rendered and Opinion filed July 13, 2000.

Panel consists of Justices Fowler, Edelman, and Hudson.

Do Not Publish — TEX. R. APP. P. 47.3(b).