

Denied and Opinion Filed September 27, 2016.



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01047-CV

IN RE: DOUGLAS D. HALOFTIS AND HORATIO LONSDALE-HANDS, Relators

Original Proceeding from the 68th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-15-04465

MEMORANDUM OPINION

Before Justices Bridges, Myers, and Whitehill
Opinion by Justice Myers

Before the Court is relators' September 2, 2016 petition for writ of mandamus seeking relief from the trial court's order reinstating the underlying case following dismissal for want of prosecution. The facts and issues are well known to the parties, so we need not recount them herein.

Standard of Review

To be entitled to mandamus relief, a relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). Based on the record before us, we conclude relators have not shown they are entitled to the relief requested. *See* TEX. R. APP. P. 52.8(a); *Walker v. Packer*, 827 S.W.2d 833, 839-40 (Tex. 1992) (orig. proceeding).

Applicable Law

Absent a timely-filed motion for a new trial, motion to reinstate, or a motion to vacate, modify, correct or reform a judgment, the trial court loses its plenary power over its judgment thirty days after the judgment is signed. TEX. R. CIV. P. 329b(d). But when a party timely files a rule 329b motion, such as a motion for new trial or a motion to reinstate after dismissal for want of prosecution, the appellate timetables are extended and the court's plenary power is extended to thirty days after the rule 329b or other plenary-period-extending motion is overruled by written order or by operation of law. *In re Valliance Bank*, 422 S.W.3d 722, 725 (Tex. App.—Fort Worth 2012, no pet.) (“A verified motion to reinstate a case filed within thirty days of a dismissal for want of prosecution extends the trial court's plenary power in the same manner as a motion for new trial.”) (citing TEX. R. CIV. P. 165a(3), (4)); *see also South Main v. Wittig*, 909 S.W.2d 243, 244 (Tex. App.—Houston [14th Dist.] 1995, orig. proceeding) (citing TEX. R. CIV. P. 165a(3) and holding that a timely and proper motion to reinstate extends the trial court's plenary power until thirty days after the motion is overruled either by a written signed order or by operation of law.).

Those deadlines change when a party or his attorney does not receive notice of the judgment or obtain knowledge of the judgment within the first twenty days after the judgment was signed as required by rule 306a(3). In that situation, the appellate timetables and the court's plenary period begin to run from the date the party or the party's attorney first receives notice from the clerk of the court or acquires actual knowledge of the judgment. TEX. R. CIV. P. 306a(4). A rule 306a motion seeks to establish that neither the party nor his attorney received actual notice of the judgment within twenty days after it was signed. TEX. R. CIV. P. 306a(4). In “no event,” however, may the running of the timetables begin more than 90 days after the signing of the original judgment. *Id.* To extend the appellate timetables in that situation, the

party must file a Rule 329b motion or other applicable motion, such as a motion for new trial or a motion to reinstate after dismissal for want of prosecution, within thirty days of the date the party or its attorney first received notice of the judgment. *John v. Marshall Health Svcs., Inc.*, 58 S.W.3d 738, 741 (Tex. 2001). To establish its right to rely on the notice date as the start of other post-judgment deadlines and to extend the court’s plenary period, however, the party must file a Rule 306a motion establishing the date on which the party or its attorney first received notice of or obtained knowledge of the judgment. *Id.* The rule 306a motion must be filed within the court’s plenary period as calculated from the date of first notice or knowledge of the judgment as alleged in the rule 306a motion. *Id.* The date of notice alleged in the rule 306a motion also controls the time period for determining if the rule 306a motion itself is timely. *Id.* A trial court has plenary power to reinstate a case within thirty days after it signs an order of dismissal for want of prosecution or within the period provided by Rule 306a. TEX. R. CIV. P. 165a(3),(4).

Analysis

Here, the real parties in interest properly and timely invoked Rule 306a by filing their motion to reinstate within thirty days of first receiving notice or acquiring actual knowledge of the order of dismissal and by supplementing that motion with their counsel’s affidavit within the trial court’s plenary period, calculated from the date of first notice of the dismissal order. *See, e.g., See In re Lynd Co.*, 195 S.W.3d 682, 685 (Tex. 2006) (Rule 306a motion and proof must be filed within the court’s plenary period calculated from the date of notice or knowledge of the judgment); *see also John*, 58 S.W.3d at 741 (same); *In re Integras Capital Recovery LLC*, 05-15-00362-CV, 2015 WL 1730200, at *2 (Tex. App.—Dallas Apr. 15, 2015, no pet.) (Rule 306a motion must be filed “before the trial court’s plenary power—measured from the date of notice established under Rule 306a(4)—expires.”); *Wells Fargo Bank, Nat. Ass’n v. Erickson*, 267 S.W.3d 139, 148–49 (Tex. App.—Corpus Christi 2008, no pet.) (motion to reinstate filed more

than thirty days after first notice of dismissal invoked Rule 306a and extended court's plenary period because motion was filed within the court's extended plenary period). In this case, the motion to reinstate and supplement were filed within the court's plenary period provided under Rule 306a, and the trial court ordered reinstatement within that period as well. Based on this record, the Court finds no abuse of discretion.

Accordingly, we **DENY** relators' petition for writ of mandamus.

/s/ Lana Myers
LANA MYERS
JUSTICE

161047F.P05