

DISMISS and Opinion Filed August 31, 2017



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00674-CV

IN THE INTEREST OF B.D., A CHILD

On Appeal from the 416th Judicial District Court
Collin County, Texas
Trial Court Cause No. 416-54333-2011

MEMORANDUM OPINION

Before Chief Justice Wright, Justice Francis, and Justice Stoddart
Opinion by Chief Justice Wright

Appellant appeals from a judgment following a jury trial on appellee's petition to modify the parent-child relationship. The Court questioned its jurisdiction over this appeal as it appeared the notice of appeal was untimely. We instructed the parties to file letter briefs addressing our concern. The parties complied.

The trial court conducted a jury trial on February 7, 2017 and appellee filed a motion to sign an order on February 9, 2017. The trial court signed a memorandum on February 22, 2017. The memorandum contains the case name, case number, and trial court name. The body of the memorandum states:

After considering the testimony and evidence presented during the jury trial in the above referenced case and in accordance with the jury verdict, the ruling of the Court is as follows:

- Pursuant to the Jury verdict, it is **ORDERED** that MOTHER and FATHER will remain joint managing conservators of the child.

- Pursuant to the Jury verdict, it is **ORDERED** that FATHER will have the exclusive right to determine the primary residence of the child within Collin County.
- It is **ORDERED** MOTHER will have an expanded standard possession schedule.
- It is **ORDERED** that MOTHER will pay guideline child support pursuant to MOTHER'S income of \$1,500 net pay every 2 weeks.
- The parties are **ORDERED** to continue communications using OurFamilyWizard.com.
- Each party is **ORDERED** to pay for his/her own respective attorney fees.
- Any and all relief not expressly granted is hereby **DENIED**.

Appellant filed a motion to suspend enforcement of judgment pending appeal on February 27, 2017. She filed a motion for new trial on March 27, 2017. The trial court signed the order in suit to modify the parent-child relationship on March 30, 2017 and appellant filed her notice of appeal on June 14, 2017.

A memorandum ruling will be accorded final judgment status triggering appellate deadlines if it substantially complies with the requisites of a formal judgment. *See In re CAS Cos., LP*, 422 S.W.3d 871, 875 (Tex. App.—Corpus Christi 2014, orig. proceeding); *In re Newby*, 266 S.W.3d 557, 558 (Tex. App.—Amarillo 2008, orig. proceeding) (per curiam). Specifically, a letter may constitute an order if: (1) it describes the decision with certainty as to parties and effect; (2) it requires no further action to memorialize the ruling; (3) it contains the name and cause number of the case; (4) the court's diction is affirmative rather than anticipatory of a future ruling; (5) it bears a date; (6) it was signed by the court; and (7) it was filed with the district clerk. *See In re CAS Cos., LP*, 422 S.W.3d at 875.

In her letter brief, appellant asserts that she does not believe the trial court intended the memorandum to be a final judgment. As support, appellant relies on the fact that the trial court conducted a hearing on March 2, 2017 on appellee's motion to enter an order and took the case

under advisement. The trial court conducted a second hearing on appellee's motion on March 30, 2017. Had the trial court intended its memorandum ruling to be final, appellant argues, it would not have entertained appellee's motion at all much less set the March 30th hearing because it would have been beyond the expiration of its plenary power. Appellant also contends the memorandum does not satisfy the requirements for a valid order on a motion to modify the parent-child relationship. *See* TEX. FAM. CODE ANN. § 105.006(b),(d), (e), (e-1), (e-2) (West Supp. 2016).

As set out above, the memorandum describes the decision with certainty, it requires no further action to memorialize the ruling, it contains the name and cause number of the case, the diction is affirmative, it is signed, dated, and filed with the district clerk. Despite the trial court's hearings to consider appellee's motion to sign an order and its subsequent order, we conclude the memorandum substantially complies with the requisites of a formal judgment to be accorded final judgment status triggering the appellate deadline. Although it does not contain the items listed in section 105.006, those items are clerical in nature, not substantive items that would preclude the memorandum from being a final judgment. *See In re O'Donnell*, No. 2-06-002-CV, 2006 WL 563325, at *2 (Tex. App.—Fort Worth Mar. 9, 2006, orig. proceeding).

Because the memorandum substantially complies with the requisites of a formal judgment, the motion for new trial filed on March 27, 2017 was untimely and ineffective to extend the trial court's plenary power. *See* TEX. R. CIV. P. 329b(a), (e). The trial court's order signed on March 30, 2017 is void because it was signed after the expiration of the trial court's plenary power. *See State ex rel. Latty v. Owens*, 907 S.W.2d 484, 486 (Tex. 1995) (judicial action taken after the court's plenary power has expired is void). In the absence of a timely post-judgment motion extending the appellate timetable, the notice of appeal was due on March 24, 2017. *See* TEX. R. APP. P. 26.1. Appellant filed a notice of appeal on June 14, 2017. Without a

timely notice of appeal, this Court lacks jurisdiction. *See* TEX. R. APP. P. 25.1(b). Accordingly, we dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a).

/Carolyn Wright/
CAROLYN WRIGHT
CHIEF JUSTICE

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

JUDGMENT

IN THE INTEREST OF B.D., A CHILD

No. 05-17-00674-CV

On Appeal from the 416th Judicial District
Court, Collin County, Texas

Trial Court Cause No. 416-54333-2011.

Opinion delivered by Chief Justice Wright.

Justices Francis and Stoddart participating.

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

It is **ORDERED** that appellee Nicholas K. Donahue recover his costs of this appeal from appellant Jessica Jones.

Judgment entered August 31, 2017.