

Not Reported in S.W.3d, 2004 WL 1899795 (Tex.App.-Hous. (14 Dist.))
(Cite as: Not Reported in S.W.3d)

H

Briefs and Other Related Documents

Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR DESIGNATION
 AND SIGNING OF OPINIONS.

MEMORANDUM OPINION

Court of Appeals of Texas, Houston (14th Dist.).

LUSHANN ENERGY INTERNATIONAL INC.,

Appellant

v.

GENERAL ELECTRIC ENERGY RENTALS

INC., Appellee.

No. 14-04-00652-CV.

Aug. 26, 2004.

On Appeal from the 157th District Court, Harris
 County, Texas, Trial Court Cause No. 04-03924.

James Okoro Okorafor, for Lushann Energy
 International Incorporated.

R. Paul Yetter and Douglas S. Griffith, for General
 Electric Energy Rentals Incorporated.

Panel consists of Chief Justice HEDGES and
 Justices FOWLER and SEYMORE.

MEMORANDUM OPINION

PER CURIAM.

*1 This is an attempted accelerated appeal from an
 interlocutory order granting a temporary injunction
 signed April 23, 2004. *See* Tex. Civ. Prac. &
 Rem.Code Ann. § 51.014(a)(4) (Vernon
 Supp.2004). Appellant timely filed a motion for
 reconsideration and request for findings of fact and
 conclusions of law. Appellant's notice of appeal was
 not filed until July 1, 2004.

On August 16, 2004, appellee filed a motion to
 dismiss the appeal for want of jurisdiction. In its
 motion, appellee asserts that appellant's notice of
 appeal is untimely because neither a motion for
 reconsideration nor a request for findings of fact

and conclusions of law extends the time to perfect
 an accelerated appeal.

Appeals from interlocutory orders are accelerated.
 Tex.R.App. P. 28.1. In an accelerated appeal, the
 notice of appeal must be filed within twenty days
 after the judgment or order is signed. Tex.R.App. P.
 26.1(b). Filing a motion for new trial will not
 extend the time to perfect the appeal. Tex.R.App.
 P. 28.1. A motion for reconsideration is the
 equivalent of a motion for new trial. The twenty-day
 period for filing a notice of appeal in accelerated
 cases is not extended by the filing of post-judgment
 motions or requests for findings of fact and
 conclusions of law. *See In re D.K.P.*, No.
 07-03-0356-CV, 2003 WL 22175937 (Tex. App.
 -Amarillo Sept. 17, 2003, no pet.) (mem.op.)
 (holding motion to modify and request for findings
 of fact and conclusions of law do not extend
 timetable in accelerated appeal); *Vaughn v. Sawyer*,
 No. 04-03-00297-CV, 2003 WL 21338615
 (Tex.App.-San Antonio June 11, 2003, no pet.)
 (mem.op.) (holding motion for new trial and request
 for findings of fact and conclusions of law do not
 extend timetable in accelerated appeal). Texas Rule
 of Appellate Procedure 26.1(a)(4), which extends
 the time to perfect an appeal to ninety days after
 judgment when findings of fact and conclusions of
 law are requested, applies only to final judgments.
Hone v. Hanafin, 105 S.W.3d 15, 18
 (Tex.App.-Dallas 2002), *rev'd on other grounds*,
 104 S.W.3d 884 (Tex.2003); *Lipshy Motorcars,*
Inc. v. Sovereign Assocs. Inc., 944 S.W.2d 68, 70 n.
 3 (Tex.App.-Dallas 1997, no writ) (holding
 predecessor to Rul 26.1(a) applies to final
 judgments, not interlocutory orders).^{FN1} Therefore,
 we hold that appellant's request for findings of fact
 and conclusions of law does not extend the time to
 perfect this accelerated appeal. To hold otherwise,
 would defeat the purpose of acceleration.
 Accordingly, appellant's notice of appeal was not
 filed timely.

Not Reported in S.W.3d, 2004 WL 1899795 (Tex.App.-Hous. (14 Dist.))
(Cite as: Not Reported in S.W.3d)

FN1. The Texas Supreme Court has not determined whether a request for findings of fact and conclusions of law extends the appellate timetable in an interlocutory appeal under Rule 26.1(b). *See Hone*, 104 S.W.3d at 888 n. 2.

Pursuant to Texas Rule of Appellate Procedure 26.3, an appellate court may extend the time to file a notice of appeal if, within fifteen days after the deadline for filing the appeal notice, the party files a notice of appeal in the trial court and a motion for extension of time in the court of appeals. *Hone v. Hanafin*, 104 S.W.3d 884, 885-86 (Tex.2003) (holding belief that request for findings of fact and conclusions of law extended time to perfect accelerated appeal constituted reasonable explanation for late filing entitling appellant to extension of time). Appellant's notice of appeal was not filed within the fifteen-day period for extensions, however.

*2 Accordingly, we grant appellee's motion. The appeal is ordered dismissed for want of jurisdiction. Tex.R.App. P. 42.3(a).

Tex.App.-Houston [14 Dist.],2004.
Lushann Energy Intern. Inc. v. General Elec.
Energy Rentals Inc.
Not Reported in S.W.3d, 2004 WL 1899795
(Tex.App.-Hous. (14 Dist.))

Briefs and Other Related Documents (Back to top)

- 14-04-00652-CV (Docket) (Jul. 02, 2004)

END OF DOCUMENT