



**COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON**

NOTICE OF INTENT TO DISMISS FOR WANT OF JURISDICTION

Appellate case name: David Soliz v. J and B Hicks et al, Jerry Hicks, Delores Hicks and
Dustin Dietert

Appellate case number: 01-23-00604-CV

Trial court case number: 2022-66023

Trial court: 80th District Court of Harris County

The Court's records indicate that this appeal is subject to dismissal for lack of jurisdiction. Appellant's August 16, 2023 notice of appeal seeks to appeal the trial court's July 17, 2023 order denying a motion for new trial. But "[a]n order denying a motion for new trial is not independently appealable." *Fletcher v. Ahrabi*, No. 01-12-00794-CV, 2012 WL 6082915, at *1 (Tex. App.—Houston [1st Dist.] Dec. 6, 2012, no pet.) (mem. op.) (citing *Overka v. Bauri*, No. 14-06-00083, 2006 WL 2074688, at *1 & n.1 (Tex. App.—Houston [14th Dist.] July 27, 2006, no pet.) (mem. op.)); *see also Wilson v. Avendano*, No. 01-21-00631-CV, 2021 WL 5903920, at *1 (Tex. App.—Houston [1st Dist.] Dec. 14, 2021, no pet.) (mem. op.) (“[A]n order denying a post-judgment motion does not exist separate from the underlying, appealable judgment, and is not independently appealable.”).

The record indicates that the appealable judgment in the underlying case was the final judgment signed on April 28, 2023. The time for filing a notice of appeal runs from the signing of the final judgment, not the subsequent denial of a motion for new trial. *See* TEX. R. APP. P. 26.1(a)(1). Even if the Court were to construe appellant's August 16, 2023 notice of appeal as an attempt to appeal the final judgment signed on April 28, 2023, the notice of appeal was untimely filed 110 days after the judgment. *See* TEX. R. APP. P. 26.1 (requiring notice of appeal to be filed within 30 days after judgment is signed or within 90 days after judgment is signed if party timely files motion for new trial). Absent a timely filed notice of appeal, an appellate court lacks jurisdiction over the appeal. *See* TEX. R. APP. P. 25.1.

Accordingly, the Court has directed me to notify you that, unless you file a written response to this notice, providing a detailed explanation, citing relevant portions of the record, statutes, rules, and case law demonstrating that this Court has jurisdiction over the

appeal, the Court may dismiss this appeal for want of jurisdiction without further notice. *See* TEX. R. APP. P. 42.3(a). Any response must be filed within **10 days** of the date of this notice.

Clerk's signature: /s/ Deborah M. Young

Date: July 18, 2024