



NUMBER 13-20-00252-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

EVERARDO “EVER” VILLARREAL,

Appellant,

v.

JOSE “JOE” FLORES,

Appellee.

**On appeal from the 398th District Court
of Hidalgo County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Benavides and Longoria
Memorandum Opinion by Chief Justice Contreras**

On March 3, 2020, appellant Everardo “Ever” Villarreal won the Democratic primary election for Hidalgo County Commissioner Precinct 3 over appellee Jose “Joe” Flores. The margin of victory was 92 votes out of 19,982 cast. Flores filed an election contest and Villarreal moved to dismiss the contest under the Texas Citizens Participation

Act (TCPA). *See* TEX. CIV. PRAC. & REM. CODE ANN. ch. 27. The trial court denied the motion to dismiss by order signed on June 19, 2020, and Villarreal filed a notice of appeal on July 7, 2020. *See id.* § 27.008(b).

Flores filed an “Emergency Motion to Dismiss for Lack of Jurisdiction” arguing that Villarreal’s notice of appeal was untimely under the election code. *See* TEX. ELEC. CODE ANN. § 232.014(b). Villarreal filed an “Emergency Motion to Enforce Automatic Stay Under Texas Civil Practice and Remedies Code Section 51.014(b)” arguing that, by scheduling a hearing for July 8, 2020, the trial court had violated the automatic stay imposed upon the appeal of a TCPA ruling. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(b). On July 8, 2020, this Court ordered that this appeal would be heard on the original papers forwarded by the trial court in lieu of the clerk’s record. *See* TEX. R. APP. P. 28.1(e). We ordered the trial court to electronically forward the original papers filed in the underlying cause to the clerk of this Court on or before 12:00 p.m. on Friday, July 10, 2020. That same day, we issued an order granting Villarreal’s motion to stay and denying Flores’s motion to dismiss. We have now received and reviewed the original papers transmitted from the trial court. Having done so, we conclude that we lack jurisdiction, and accordingly, we now reconsider and withdraw our previous order denying the motion to dismiss.

The underlying case is a primary election contest under the election code. Such contests are statutory creatures subject to very strict timelines. *See, e.g.*, TEX. ELEC. CODE ANN. § 232.008(c)(1) (providing that a primary election contest must be filed not later than the later of the tenth day after the date the election records are publicly available or the official result is determined); *id.* § 232.012(c) (providing that a primary contestee must file

an answer to the contestant's petition “not later than 10 a.m. of the fifth day after the date of service of citation on the contestee”); *id.* § 232.012(d) (providing that the judge “shall set the contest for trial for a date not later than the fifth day after the date by which the contestee must answer”).

The statute governing appeals of primary election contests provides in part:

To be timely, an appellant’s bond, affidavit, or cash deposit for costs of appeal must be made not later than the fifth day after the date the district court’s judgment in the contest is signed. If the appellant is not required to give security for the costs of appeal, the notice of appeal must be filed by the same deadline.^[1]

Id. § 232.014(b). The statute does not implicitly or explicitly limit its applicability to final judgments or otherwise distinguish between interlocutory appeals and final judgments—any appeal in a primary contest must be perfected within five days of the judgment. See *id.* And, there is nothing in the TCPA that conflicts with § 232.014(b) or otherwise operates to extend the deadline for an appeal taken in a primary election contest.

Therefore, under the plain language of § 232.014(b), Villarreal was required to file his notice of appeal “not later than the fifth day after the date the district court’s judgment in the contest is signed.” *Id.* He failed to do so. It follows that the notice of appeal was untimely, and we lack jurisdiction over the appeal.

In the usual case, we would ordinarily wait ten days to determine the motion to dismiss, or we would request that Villarreal file a response to the motion to dismiss prior to disposition. However, given the exigencies present in this appeal, we proceed with our disposition. See TEX. R. APP. P. 2, 10.3(a)(3). We withdraw our order of July 8, 2020. Flores’s “Emergency Motion to Dismiss for Lack of Jurisdiction” is GRANTED and the

¹ There is no dispute that Villarreal was not required to give security for the costs of appeal.

appeal is DISMISSED FOR WANT OF JURISDICTION. All other pending motions are dismissed as moot.

DORI CONTRERAS
Chief Justice

Delivered and filed the
10th day of July, 2020.