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THE BOARD OF DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

No. 67843

**Before the Board of Disciplinary Appeals
Appointed by
The Supreme Court of Texas**

LAUREN ASHLEY HARRIS
STATE BAR OF TEXAS CARD NO. 24080932,
APPELLANT

V.

**COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE**

*On Appeal from an Evidentiary Panel
For the State Bar of Texas District 14
No. 202000647 [North]*

**APPELLEE'S REPLY TO APPELLANT'S RESPONSE IN OPPOSITION TO MOTION TO
DISMISS FOR WANT OF JURISDICTION**

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TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline (the “Commission”), offers this reply to Appellant’s Response in Opposition to Motion to Dismiss for Want of Jurisdiction, and again asks the Board to dismiss this appeal for want of jurisdiction.

I.

In response to the Commission’s motion to dismiss this matter for want of appellate jurisdiction, Appellant essentially offers two arguments. First, that the

Commission waived any jurisdictional argument by not raising it before the evidentiary panel in response to Appellant's non-timely motion for new trial. And second, that Appellant has, since the date of the underlying judgment "manifested a clear, unequivocal intent to assail the judgment as void, procedurally defective, unconstitutional and inequitable, while contemporaneously asserting a clear intent to appeal the judgment before BODA if those actions proved unsuccessful." [Apt. Response, p. 4]. Appellant's arguments are addressed in turn.

A. *Jurisdiction cannot be waived.*

A court's lack of jurisdiction cannot be waived. *Walker v. Cleere*, 174 S.W.2d 956, 957-58 (Tex. 1943). Indeed, even when the parties themselves do not challenge the jurisdiction of a court to hear an appeal at all, the court itself is obligated to determine on its own whether its assumption of appellate jurisdiction is proper. *New York Underwriters Ins. Co. v. Sanchez*, 799 S.W.2d 677, 678 (Tex. 1990); *see also*, *Phillips v. State*, 77 S.W.3d 465, 466-67 (Tex.App. – Houston [1st Dist.] 2002, no pet.) (per curiam); *One (1) 2007 GMC Yukon VIN 1GKFC13047R304753 v. State*, 405 S.W.3d 305, 308-09 (Tex.App. – Corpus Christi 2013, no pet.). Appellant's argument that the Commission waived the jurisdictional argument is without merit.

B. *Appellant's Motion to Stay Execution of the Default Judgment against her was not a "bona fide attempt" to invoke appellate jurisdiction, nor did it extend Appellant's timetable to perfect an appeal.*

Contrary to Appellant’s attempts to manufacture an after-the-fact justification for her failure to timely perfect her appeal, the record in this matter demonstrates she did not timely invoke appellate jurisdiction. The Default Judgment of Partially Probated Suspension was issued against Appellant in the underlying disciplinary proceeding on February 7, 2023. [CR 195-202]. The only pleading filed before the evidentiary panel by Appellant within thirty days of the judgment was her Motion to Stay Execution of Default Judgment for Partially Probated Suspension Pending Panel Rulings and/or Appeal and Request for Record (the “Motion to Stay”). [CR 205-223].

Appellant’s Motion to Stay did not constitute a “bona fide attempt” to invoke appellate jurisdiction as Appellant did not expressly indicate an actual, unqualified intent to appeal. [Id.] Further, after filing her non-timely motion for new trial on March 13, 2023, Appellant filed two additional post-judgment pleadings indicating she had not yet determined whether she intended to appeal.¹

On March 23, 2023, Appellant filed her Verified Notice of Supplemental Facts; Relevant to Pending Motions Before the Panel/Possible BODA Appeal. [CR 397-411]. That same day, Appellant also filed her Requests to the Panel; Preservation of Error and BODA Appeal. [CR 413-424]. In each of *those* pleadings,

¹ And again, by failing to file her motion for new trial within thirty days of the judgment, Appellant failed to extend her time to file her notice of appeal beyond that same thirty days. TEX RULES DISCIPLINARY P.R. 2.23; TEX. BD. DISCIPLINARY APP. INTERNAL PROC. R. 4.01(a), (d).

Appellant’s references to an appellate remedy were couched only as a “*possible BODA appeal*.” And, as set forth in the Commission’s motion to dismiss, Appellant did not file her notice of appeal until May 8, 2023.

Moreover, Appellant’s representation that her Motion for Stay “specifically called for a new trial in the prayer” and thus, effectively constituted a timely-filed motion for new trial, is inaccurate. [Apt. Response, p. 10]. Nowhere in Appellant’s Motion to Stay does she request a new trial, and the only mention of new trial contained in the prayer regards her seeking a stay “during the pendency of exhausting all avenues for new trial/appeal.” [CR 210]. Indeed, at the outset of her Motion to Stay Appellant explained that she *intended* to make “contemporaneous filings” of her Motion to Stay and “Motions to Set Aside/Modify the Judgment and/or Motion to Vacate/for New Trial”, but that her motion for new trial would “take more time” and would be filed “as soon thereafter as possible.” [CR 205].

Appellant’s attempts to re-characterize her Motion to Stay as either a “bona fide attempt” to invoke appellate jurisdiction, or as a misnomered, but timely-filed, motion for new trial fall short. And though “Texas law greatly favors resolving litigation on the merits rather than on procedural technicalities...the lack of a timely notice of appeal is the most fundamental procedural error that *can* lead to a total loss...because the absence of a timely notice of appeal prevents the appellate court from ever exercising jurisdiction in the first place.” *Mitschke v. Borromeo*, 645

S.W.3d 251, 260 (Tex. 2022) (citing *In re K.A.F.*, 160 S.W.3d 923, 927 (Tex. 2005)).
“Being *timely*...is no mere technicality; it remains essential.” *Id.*, at 261 (citing *In re K.A.F.*, 160 S.W.3d at 927).

CONCLUSION AND PRAYER

Recognizing her failure to timely perfect her appeal, Appellant now reimagines her post-judgment pleadings in an attempt to address that failure after the fact. But the record demonstrates Appellant failed to timely file her notice of appeal, having failed to extend the time for filing such by failing to timely file her motion for new trial. Appellant’s recharacterization of her post-judgment pleadings does not cure those failures.

For these reasons, the Commission again prays that the Board dismiss this appeal for want of jurisdiction.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Appellee's Reply to Appellant's Response to Motion to Dismiss for Want of Jurisdiction has been served on Appellant, Lauren Ashley Harris, by email to lauren@lahlegal.com on the 7th day of July, 2023.



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