



FILED

6/23/23

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

No. 67843

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**BEFORE THE BOARD OF DISCIPLINARY APPEALS**

*APPOINTED BY*

**THE SUPREME COURT OF TEXAS**

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**LAUREN ASHLEY HARRIS**

*STATE BAR OF TEXAS NO. 24080932,*

*APPELLANT,*

**v.**

**COMMISSION FOR LAWYER DISCIPLINE,  
APPELLEE.**

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*On Appeal from Cause No. 202000647 [North]*

*Grievance Committee, District 14*

*Evidentiary Panel 14-2 of the State Bar of Texas*

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

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PRO-SE APPELLANT

No. 67843

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***TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:***

**COMES NOW, APPELLANT, LAUREN ASHLEY HARRIS,** and files this her  
*Response in Opposition to Appellees' Motion to Dismiss for Want of Jurisdiction,*  
wherein Appellant will show this tribunal, the Board of Disciplinary  
Appeals ("BODA"), that this action must be retained on the BODA docket

and proceed forward in the appeal of this case before BODA on the merits against the Default Judgment obtained by Appellee, the Commission for Lawyer Discipline (the “Commission”) through its counsel, the Office of Chief Disciplinary Counsel (the “CDC”).

**I.**  
**INTRODUCTION**

**THE COMMISSION, THROUGH THE CDC, IN CONTRAVENTION TO THE RULES, BODA PRECEDENT AND DUE PROCESS, DID NOT SERVE APPELLANT WITH THE UNDERLYING EVIDENTIARY PETITION. AS A RESULT, A VOID JUDGMENT<sup>1</sup> BY DEFAULT FROM EVIDENTIARY PANEL 14-2 WAS ENTERED ON FEBRUARY 7, 2023. THE JUDGMENT, A MOST DEVASTATING SURPRISE, OPERATED TO: ACTIVELY SUSPEND APPELLANT FROM THE PRACTICE OF LAW; TERMINATE APPELLANT FROM A NEWLY ACQUIRED FULL-TIME POSITION OF EMPLOYMENT AND SUFFER COMPLETE LOSS OF INCOME.**

**NOW --ON THE HEELS OF THE GLARING PROCEDURAL DEFECTS MADE ONLY TO APPELLANT’S DETRIMENT IN THE POST-JUDGMENT PROCEEDINGS BEFORE THE PANEL -- THE COMMISSION/CDC SEEKS TO AGAIN OBTAIN A DEFAULT RULING AGAINST APPELLANT IN THIS BODA APPEAL BASED ON MERE TECHNICALITY/CLERICAL ERROR.**

**APPELLEE DID NOT MAKE THIS ARGUMENT BEFORE THE PANEL, AND IN FACT, THE APPELLEE, AS THE NON-MOVANT ON THE MOTION FOR NEW-TRIAL, WAS THE PARTY THAT FORCED THE MOTION TO BE HEARD ON THE DATE AND TIME IT WAS PRESENTED – AS APPELLEE STRATEGICALLY EXCLUDED ANY NOTICE THAT THE HEARING WOULD ALSO COVER THE MOTION TOP SET-ASIDE/NEW TRIAL, AND PROVIDED NO NOTICE TO APPELLANT AT ALL; YET, NOW SEEKS TO DISMISS THIS APPEAL FOR ERROR ON THE MOTION WHICH MORPHED**

INTO ITS HEARING ON THE MOTION FOR WHICH IT SUCCEEDED IN OBTAINING RULING DENYING THE RELIEF. NOT ONLY DOES THE FAILURE TO OBJECT WAIVE THE ISSUE NOW, BUT EVEN IF IT DIDN'T, NO ALLEGATIONS OF PREJUDICE OR FAILURE OF NOTICE OR DETRIMENTAL EFFECT HAS BEEN MENTIONED LET ALONE LODGED TO SUPPORT DISMISSAL OF THIS MATTER BY BODA.

FROM THE MOMENT APPELLANT BECAME AWARE OF THE EVIDENTIARY ACTION, ON FEBRUARY 7, 2023 -- THE DATE THE DEFAULT JUDGMENT WAS ENTERED -- SHE HAS 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. SUCH INTENT IS UNDOUBTEDLY APPARENT FROM THE FACE OF THE RECORD, REFLECTED IN APPELLANT'S MULTIPLE POST-JUDGMENT EVIDENTIARY PANEL FILINGS, ALL WHICH ASSAIL THE JUDGMENT; THE FIRST MADE A MERE THIRTEEN-DAYS AFTER ENTRY ON FEBRUARY 20, 2023, *RESPONDENT'S MOTION TO STAY EXECUTION OF DEFAULT JUDGMENT PENDING PANEL REVIEW/BODA APPEAL AND REQUEST FOR RECORD*. ALL IN ALL, THE INTERESTS OF EQUITY DO NOT SUPPORT A DISMISSAL AND THIS MATTER MUST BE RETAINED ON THE DOCKET.

## II.

### LIMITED/RELEVANT FACTUAL & PROCEDURAL BACKGROUND

#### A. Evidentiary Petition through Default Judgment

1. On January 27, 2023, the CDC moved forward with a hearing for default judgment before District 14, Evidentiary Panel 14-2, and on that date, the Evidentiary Panel Chair entered an Order Granting Motion for Default Judgment against Appellant. [CR 183].

2. On February 7, 2023, the Evidentiary Panel Chair executed the Default Judgment of Partially Probated Suspension against Appellant, actively suspending her from the practice of law until July 31, 2023 (the "Judgment"). [CR 195-202].

**B. Post-Judgment through BODA Appeal & Instant Motion to Dismiss**

3. On February 20, 2023, Appellant filed *Respondent's Motion to Stay Execution of Default Judgment of Partially Probated Suspension Pending Panel Rulings/BODA Appeal and Request for Record*.

4. On March 10, 2023, Appellant filed *Respondent's Motion to Set-Aside/Vacate the Default Judgment of Partially Probated Suspension and/or for New Trial with Exhibit Binder HARRIS.0001-0479*.

5. On March 23, 2023, Appellant filed *Respondent's Requests for Panel Review to Preserve Error/BODA Appeal and Respondent's Verified Notice of Supplemental Facts* with exhibit binder HARRIS.0480-665.

6. On March 24, 2023, Appellant filed *Respondent's Reply to Petitioner's Response to Respondent's Motion to Stay Execution of Default Judgment of Partially Probated Suspension and Request for Record*.

7. On that same date, the contents of the Formal Bill of Exceptions came to fruition, and the hearing was held in which appellant presented under duress, as appellant attempted to have her motion to stay ruled on by submission, but only found out in the hearing that the Court reporter was not present for the hearing and both the Motions were being heard. Appellant objected to no avail and asked for a continuance, to no avail. The exhibit binders were also wholly excluded over Appellant's objections; see Formal Bill of Exceptions.

8. Appellant did not receive the signed Orders denying both the Motions until March 27, 2023. After which Past-Due Findings of Fact and Conclusions of Law were entered, and the Findings/Conclusions themselves.

9. On May 8, 2023, Appellant filed her Notice of Appeal, which was 90 days after the signing of Judgment.

**III.**  
**.LEGAL STANDARD(S) AND ANALYSIS**

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10. The facts of this matter are actually directly analogous to the vast body of Texas case law on this topic; instead of dismiss a party's appeal based on clerical or technical error/hyper-technical reading of the rules to

find such issue, instead, the Supreme Court of Texas/the Texas Appellate Courts have held:

*Any bona fide attempt to file a notice of appeal within the time for filing a notice of appeal will invoke the appellate court's jurisdiction.*<sup>2</sup> The court recognized that the defendant had done everything possible to preserve his appellate rights, and he would not lose those rights simply because the court of appeals later found its own decision to be erroneous.<sup>3</sup>

11. The Supreme Court of Texas has further stated “[a]s we have repeatedly affirmed, the appellate rules must be construed “reasonably, yet liberally, so that the right to appeal is not lost by imposing requirements not absolutely necessary to effect the purpose of a rule.”<sup>4</sup>

12. Moreover, “[t]his Court has never wavered from the principle” that “the right of appeal should not be lost due to procedural technicalities.”<sup>5</sup>

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<sup>2</sup> *Linwood v. NCNB Tex.*, 885 S.W.2d 102, 103 (Tex. 1994); see also *Gregorian v. Ewell*, 106 S.W.3d 257, 260 (Tex. App.-Fort Worth 2003, no pet.) (holding that the filing of a cash deposit in lieu of supersedeas bond within the time period for filing a notice of appeal, where the appellant's intent to appeal was made known and where the appellee claimed no surprise that appellant intended to appeal, constitutes a bona fide attempt to invoke the jurisdiction of the appellate court).

<sup>3</sup> *Briscoe v. Goodmark Corp.*, 102 S.W.3d 714 (Tex. 2003). In *LaGoye v. Victoria Wood Condominium Ass'n*, 268. Id. at 782. 269. d.267

<sup>4</sup> *Id.* at 616-17.

<sup>5</sup> *Verburgt*, 959 S.W.2d at 616 (“[A]ppellate courts should not dismiss an appeal for a procedural defect whenever any arguable interpretation of the Rules of Appellate Procedure would preserve the appeal.”); *Roccaforte*, 341 S.W.3d at 924; see *Ryland Enter., Inc. v. Weatherspoon*, 355 S.W.3d 664, 665-66 (Tex. 2011) (holding that the court of appeals erred in dismissing an appeal because an arguable interpretation of the appellate rules allowed a premature, pre-judgment motion to extend an appellate timetable).

To that end, we have repeatedly instructed that “a court of appeals has jurisdiction over any appeal in which the appellant files an instrument in a bona fide attempt to invoke the appellate court’s jurisdiction.”<sup>6</sup>

13. That certainly is the case here, where Appellant properly invoked the appellate court’s jurisdiction in every post-judgment filing, beginning with the Respondent’s Motion to Stay, timely filed a mere thirteen days after entry of the judgment.

14. The Supreme Court of Texas repeatedly has urged courts of appeals to interpret the appellate rules, whenever possible, to achieve the aim of furthering resolution of appeals on the merits.<sup>7</sup> A court of appeals has jurisdiction if an appellant files an instrument that is improper but constitutes a bona fide attempt to invoke appellate jurisdiction.<sup>8</sup>

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<sup>6</sup> *Verburgt*, 959 S.W.2d at 616.

<sup>7</sup> See *Warwick Towers Council of Co-Owners ex rel. St. Paul Fire & Marine Ins. Co. v. Park Warwick, L.P.*, 244 S.W.3d 838, 839 (Tex. 2008) (per curiam) (requiring court of appeals to grant appellant an opportunity to amend a defective notice of appeal); *Bennett v. Cochran*, 96 S.W.3d 227, 230 (Tex. 2002) (relaxing the time deadline for filing a statement of points or issues under rule 34.6(c)(1) absent a complaint of prejudice).

<sup>8</sup> *Linwood v. NCNB Tex.*, 885 S.W.2d 102, 103 (Tex. 1994) (holding improper filing of notice of appeal, rather than required cost bond under former rules, sufficed as bona fide attempt to invoke appellate jurisdiction); *Grand Prairie I.S.D. v. S. Parts Imports, Inc.*, 813 S.W.2d 499, 500 (Tex. 1991) (applying the prior version of the appellate rules, which made the cost bond rather than a notice of appeal the perfecting instrument, and holding that the court of appeals must give appellant filing an improper document in a bona fide effort to perfect an appeal an opportunity to correct the error by filing the correct instrument).



15. It is a “well-established principle that “a court of appeals has jurisdiction over any appeal in which the appellant files an instrument in a bona fide attempt to invoke the appellate court’s jurisdiction.”<sup>9</sup> Noting the general rule that an appellate court has jurisdiction over any "bona fide attempt to invoke appellate jurisdiction," the court of appeals found that where **there is no confusion** as to which judgment appellant intends to appeal, the placement of the wrong case number on the notice of appeal will not "defeat the appellate court's jurisdiction."<sup>10</sup>

16. The Second Court of Appeals has granted appellants an extension of time to perfect an appeal in a situation similar to the one at issue.<sup>11</sup> The court held that appellants invoked the court's jurisdiction by making a bona fide attempt to appeal when they filed their cash deposit in lieu of supersedeas bond within the period required for perfecting their appeal.<sup>12</sup> The Third Court of Appeals ruled similarly in an appeal in a forcible detainer action.<sup>13</sup> The court held "the deposit of the amount of security

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<sup>9</sup> *Verburgt v. Dorner*, 959 S.W.2d 615, 616 (Tex. 1997)

<sup>10</sup> . *Id.* At 782.

<sup>11</sup> See *Gregorian*, 106 S.W.3d at 258-60.

<sup>12</sup> *Id.* at 260.

<sup>13</sup> See *Epstein v. Bank of Am., N.A.*, No. 03-13-00608-CV, 2013 WL 6002876 (Tex. App.—Austin Nov. 8, 2013, no

ordered by the trial court to supersede the judgment—an action whose purpose and effect is to prevent enforcement of the trial court's judgment during an appeal—represents the sort of 'bona fide attempt' to invoke appellate jurisdiction that confers such jurisdiction." <sup>14</sup>

17. The Supreme Court of Texas, applying former Rule of Appellate Procedure 41(a)(1), held that an affidavit in lieu of cost bond filed within the fifteen-day time for filing a motion for extension of time to perfect the appeal, implied a motion for extension, subject to establishing a reasonable basis for the extension.<sup>15</sup>

18. Appellant contends that the February 20, 2023 *Motion to Stay* assailed the Judgment and specifically called for a new trial in the prayer, regardless of what it was titled. Therefore, the *Motion to Set-Aside* operated as First Amended Motion for New Trial and therefore the Notice of Appeal was timely filed. Appellant did not need to ask for an extension, but if found to require same, Appellant seeks leave from BODA to correct any and every

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pet.) (mem. op.).

<sup>14</sup> *d.* at \*2.

<sup>15</sup> *Jones v. City of Houston*, 976 S.W.2d 676, 677 (Tex. 1998); see also *Grand Prairie I.S.D.*, 813 S.W.2d at 500 (holding that the filing of a notice of appeal rather than a cost bond under the former rules sufficed as a bona fide attempt to appeal).

issue which will properly present this matter before the Board for review on the merits.<sup>16</sup>

19. Will Supplement.

**CONCLUSION AND PRAYER**

For these reasons, Appellant, Lauren Ashley Harris, prays that BODA deny all requested relief sought by the Commission for dismissal of this appeal, and grant all other relief to Appellant -- whether general or special, at law or in equity -- that BODA finds her to be justly entitled.

RESPECTFULLY SUBMITTED,  
*/s/ Lauren A. Harris*

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<sup>16</sup> Based on these authorities, we conclude that appellant made a bona fide attempt to invoke our jurisdiction when he filed a supersedeas bond and later a cash deposit in lieu of the increased bond. By depositing the cash within the fifteen-day period for filing an extension of time, a motion for extension of time is implied. *See Jones*, 976 S.W.2d at 677; *Epstein*, 2013 WL 6002876 at \*2; *Gregorian*, 106 S.W.3d at 258. Appellant is still obligated to come forward with a reasonable explanation to support the late filing, however. *See Miller v. Greenpark Surgery Ctr. Assocs., Ltd.*, 974 S.W.2d 805, 808 (Tex. App.—Houston [14th Dist.] 1998, no pet.). We grant appellant an opportunity to file a motion for extension of time to perfect his appeal providing an explanation for the late filing on or before **September 9, 2014**. *See* Tex. R. App. P. 26.3, 10.5(b). We deny appellee's motion to dismiss the appeal for want of jurisdiction. If appellant fails to comply with this order, however, the court shall dismiss the appeal. *See* Tex. R. App. P. 42.3(a).

*Cisneros v. Cisneros*, No. 14-14-00616-CV, at \*4-6 (Tex. App. Aug. 26, 2014)

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PRO-SE APPELLANT

**CERTIFICATE OF SERVICE**

This is to certify that the above and foregoing Appellant's Motion to Supplement the Clerk's Record has been served by electronic transmission on Appellee, The Commission for Lawyer Discipline, through its counsel, the Office of the Chief Disciplinary Counsel, and filed with the Board of Disciplinary Appeals on this day, the 8th day of June, 2023, as follows:

VIA E-MAIL:

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