



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-22-00289-CV

ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY, Appellant

v.

HELEN DOLLARD, Appellee

On Appeal from County Court at Law No. 2
Tarrant County, Texas
Trial Court No. 2017-006962-2

Before Sudderth, C.J.; Birdwell and Walker, JJ.
Opinion by Chief Justice Sudderth

OPINION

This case illustrates the potential perils of procrastination. Although the deadline for Appellant Allstate Fire and Casualty Insurance Company's motion for new trial was May 23, it was not until around 8:30 p.m. that night that Allstate discovered that its most recent electronic draft of the motion had become corrupted. Rather than file a truncated version before midnight, Allstate chose to recreate the entire document, and its recreated motion was not electronically filed until 2:50 a.m. the following morning—two hours and fifty minutes past the deadline. About an hour later, Allstate moved to have its filing deemed timely or for an extension of time to file a motion for new trial.¹ Allstate contends that it was entitled to this relief under Rule of Civil Procedure 21(f)(6) because the motion for new trial's tardiness was caused by "a technical failure."² *See* Tex. R. Civ. P. 21(f)(6) ("If a document is untimely due to a technical failure or a system outage, the filing party may seek

¹After Allstate moved for an extension, Appellee Helen Dollard questioned the veracity of Allstate's story and moved to depose Allstate's counsel. Dollard noted that, on at least two prior occasions involving other litigation, Allstate's counsel had filed extension requests based on allegedly corrupted documents, and those extension requests contained substantially similar accounts of counsel's last-minute discovery that the filing had become corrupted. While this pattern is indeed noteworthy, for purposes of this appeal, we presume the veracity of Allstate's counsel's sworn description of events.

²References to the "Rules" refer to the Texas Rules of Civil Procedure unless stated otherwise.

appropriate relief from the court[, and i]f the deadline is one imposed by these rules, the filing party must be given a reasonable extension of time to complete the filing.”).

But the plain language of Rule 5 prohibited the extension Allstate requested, and we recognized as much in *Mincer v. Summers*. See Tex. R. Civ. P. 5; *Mincer v. Summers*, No. 02-21-00150-CV, 2022 WL 1573715, at *5 n.4 (Tex. App.—Fort Worth May 19, 2022, pet. denied) (mem. op.) (holding that trial court could deem motion for new trial timely but could not grant extension without violating Rule 5). We also recognized, though, that Rule 21(f)(6) allows a motion for new trial to be deemed timely based on “a technical failure”—but only if the motion is timely “transmitted” to the e-filing service provider. Tex. R. Civ. P. 21(f)(5), (6); *Mincer*, 2022 WL 1573715, at *5 n.4. Logically, then, a “technical failure” that warrants such action cannot include a pre-transmission, localized computer problem. See Tex. R. Civ. P. 21(f)(6).

Thus, based on the plain language of Rules of Civil Procedure 5, 21(f)(5), and 21(f)(6); the case law interpreting those rules; and the imprudence of charting a new course, we hold that Allstate’s motion for new trial was untimely and could not be deemed timely under Rule 21(f)(6). See Tex. R. Civ. P. 5, 21(f)(5), (6). We dismiss Allstate’s appeal for want of jurisdiction.

I. Jurisdictional Background

Although Allstate attempts to appeal the judgment on its merits, jurisdiction is a threshold issue. See *In re Dow*, 481 S.W.3d 215, 220 (Tex. 2015) (orig. proceeding).

A. Motion for New Trial’s Effect on Appellate Jurisdiction

“[T]he time for filing a notice of appeal is jurisdictional in this court,” and a motion for new trial extends the deadline for filing the notice of appeal. *Manning v. Funimation*, No. 02-22-00145-CV, 2022 WL 1573486, at *1 (Tex. App.—Fort Worth May 19, 2022, no pet.) (mem. op.) (quoting *Mitchell v. Estrada*, No. 02-22-00005-CV, 2022 WL 1183342, at *1 (Tex. App.—Fort Worth Apr. 21, 2022, no pet.) (mem. op.)); see Tex. R. App. P. 25.1(b).

Generally, a notice of appeal is due 30 days after the final judgment or appealable order is signed. Tex. R. App. P. 26.1. But if the appellant files a motion for new trial, the notice of appeal need not be filed until 90 days after the appealable judgment or order is signed. Tex. R. App. P. 26.1(a). That is, as long as the motion for new trial is timely—an untimely motion for new trial is “ineffective to extend the appellate deadlines.” *Manning*, 2022 WL 1573486, at *1 n.3.

To be effective, a “motion for new trial, if filed, shall be filed prior to or within thirty days after the judgment or other order complained of is signed.” Tex. R. Civ. P. 329b(a).

B. Allstate’s Motion for New Trial³

Here, Allstate relied on its motion for new trial to extend the deadline for its notice of appeal. Because Allstate’s notice of appeal appeared untimely, *see* Tex. R. App. P. 26.1, we notified the parties of our concern that we lacked jurisdiction over this appeal, and we invited them to submit responses showing that the appeal had been timely perfected. *See* Tex. R. App. P. 42.3(a), 44.3. Allstate submitted a verified response detailing the computer problems it experienced while filing its motion for new trial and arguing that the motion was or could be deemed timely.

The final judgment was signed on April 22, 2022, meaning that Allstate was required to file either a notice of appeal or a motion for new trial by midnight on Monday, May 23, 2022.⁴ *See* Tex. R. App. P. 26.1(a); Tex. R. Civ. P. 329b(a). As already mentioned, Allstate filed its motion for new trial at 2:50 a.m. the following morning—after the deadline. Then, within an hour, it moved to have its filing

³Allstate’s motion for new trial was also a motion to modify the judgment; it sought a new trial as an alternative to reforming the judgment. Regardless, “[a] motion to modify, correct, or reform a judgment . . . shall be filed and determined within the time prescribed by this rule for a motion for new trial and shall extend the trial court’s plenary power and the time for perfecting an appeal in the same manner as a motion for new trial.” Tex. R. Civ. P. 329b(g). For simplicity, we refer to the motion as a motion for new trial.

⁴The 30th day after the judgment’s signing was May 22, 2022, but that day was a Sunday, so the deadline was extended “until the end of the next day which [wa]s not a Saturday, Sunday, or legal holiday.” Tex. R. Civ. P. 4.

deemed timely or for an extension to make the filing timely. The trial court did not rule on the motion for new trial.⁵

Nonetheless, banking on the theory that its motion for new trial would be considered timely—by extension or otherwise—Allstate waited to file its notice of appeal until, again, 8:30 p.m. on the 90th day after the judgment. *See* Tex. R. App. P. 26.1(a). In doing so, Allstate chose to put all its appellate eggs in the late-filed-motion-for-new-trial basket. If Allstate’s motion for new trial was (or could be deemed) timely, then its notice of appeal was also timely. But if Allstate’s motion for new trial was untimely (and could not be deemed timely), then the motion was “ineffective to extend the appellate deadlines,” and the notice of appeal was untimely. *Manning*, 2022 WL 1573486, at *1 n.3.

Consequently, our jurisdiction over this appeal turns on the timeliness of Allstate’s motion for new trial.

II. Discussion

In its response to our jurisdictional inquiry, Allstate acknowledges that its motion for new trial was filed after the deadline, but it points to Rule 21(f)(6) as the solution to its untimely filing. *See* Tex. R. Civ. P. 21(f)(6).

⁵In August 2022—after we notified the parties of our concern that we lacked jurisdiction and after Allstate filed its response—the trial court signed an order denying Allstate’s motion for an extension and stating that it “no longer ha[d] plenary power to rule on a [m]otion for [n]ew [t]rial.”

Rule 21(f)(6) provides that, “[i]f a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the court[, and i]f the missed deadline is one imposed by these rules, the filing party must be given a reasonable extension of time to complete the filing.” *Id.* Allstate claims that the cause of its untimeliness—its corrupted computer file—qualifies as “a technical failure” under Rule 21(f)(6), so (1) it was entitled to “a reasonable extension” that effectively cured its untimeliness or (2) it was entitled to have its motion deemed timely as a form of “appropriate relief.” *See id.* For the reasons explained below, (1) Allstate was not entitled to an extension of the deadline for filing its motion for new trial, and (2) its motion for new trial could not be deemed timely filed under the facts present here.

A. Rule 5: No Extension Available

Allstate could not obtain an extension of the 30-day deadline to file its motion for new trial. *See* Tex. R. Civ. P. 5. While most other filings are eligible for extensions, Rule 5 limits extensions in the context of motions for new trial. *See id.*

The plain language of Rule 5—which generally authorizes a trial court to extend deadlines set in the Rules—states that a trial court “may not enlarge the period for taking any action under the rules relating to new trials except as stated in these rules.” *Id.* Binding Texas Supreme Court precedent has enforced this prohibition for more than 70 years. *See, e.g., Moritz v. Preiss*, 121 S.W.3d 715, 720 (Tex. 2003) (“The trial court’s inherent power does not allow a trial court to disregard the plain language

of Rule 5 and enlarge the time for filing new trial motions.”); *A.F. Jones & Sons v. Republic Supply Co.*, 246 S.W.2d 853, 856 (Tex. 1952) (holding that “the trial court was without authority to enlarge the time for filing an original motion for new trial”). Essentially, Allstate asks us to violate this Rule and longstanding precedent without even acknowledging the Rule or enunciating a reason why we should depart from it.

And we see no reason to do so. Departing from Rule 5’s prohibition would require us to disregard not only the plain language of the Rule and the Texas Supreme Court precedent enforcing it but also our own case law reaffirming Rule 5 in the context of the “technical failure” provision specifically. *See Mincer*, 2022 WL 1573715, at *5 n.4; *cf. Mitschke v. Borromeo*, 645 S.W.3d 251, 256–57 (Tex. 2022) (emphasizing the importance of stare decisis—including “[h]orizontal stare decisis” that binds a court to its own precedent—and describing it as “a judicial commitment to precedent, which is an essential ingredient in the rule of law itself”).

In *Mincer*, the trial court relied on the “technical failure or system outage” provision of Rule 21(f)(6) to purportedly grant an extension of time to file a motion for new trial. *See* 2022 WL 1573715, at *5 & n.4. Although we ultimately concluded that the trial court had not actually granted an extension (for reasons explained below), we noted that if it had done so, it would have “transgress[ed] Rule 5’s strictures that “[t]he court may not enlarge the period for taking any action under the rules relating to new trials.”” *Id.* at *5 n.4 (quoting Tex. R. Civ. P. 5). In other words, we confirmed that Rule 5’s narrow prohibition on extensions is an exception to Rule

21(f)(6)’s general statement regarding the relief available for “technical failure[s].” *Id.*; Tex. R. Civ. P. 5, 21(f)(6); *see* Tex. Gov’t Code Ann. § 311.026(b) (providing that a specific provision prevails over a conflicting general provision and should be construed as an exception); *see also In re R.C.M.*, Nos. 2-09-080-CV, 2-09-347-CV, 2010 WL 1267759, at *5 (Tex. App.—Fort Worth Apr. 1, 2010, no pet.) (mem. op.) (“The principles of statutory construction apply to the rules of civil procedure, and it is a well-settled principle of statutory construction that a specific statute controls over a general statute.”).

Rule 5 and binding precedent applying the Rule in this very context prohibited the trial court from granting Allstate an extension—even an extension based on a “technical failure or a system outage” under Rule 21(f)(6). *See* Tex. R. Civ. P. 5, 21(f)(6); *Mincer*, 2022 WL 1573715, at *5 n.4.

B. Rule 21(f): No Deemed Timeliness

While an extension to file a motion for new trial is prohibited, a court may deem a seemingly tardy motion for new trial as timely filed under certain circumstances. One such circumstance is provided by Rule 21(f)(6). *See* Tex. R. Civ. P. 21(f)(6). But here, Allstate’s motion for new trial could not be deemed timely under Rule 21(f)(6) because the motion was not timely “transmitted” to Allstate’s e-filing service provider. Tex. R. Civ. P. 21(f)(5); *Mincer*, 2022 WL 1573715, at *5 n.4.

1. Rule 21(f)(5) ties the time of e-filing to transmission.

An electronic “document is deemed filed when transmitted to the filing party’s electronic filing service provider.” Tex. R. Civ. P. 21(f)(5). We have referred to this as the “electronic equivalent of the mailbox rule”; like the hard-copy mailbox rule, the timeliness of an e-filing is based on when the party transmits the document to the e-filing system—the electronic equivalent of dropping the document into the mailbox. *Cummings v. Billman*, 629 S.W.3d 297, 300 (Tex. App.—Fort Worth 2020) (op. and order), *op. on merits*, 634 S.W.3d 163 (Tex. App.—Fort Worth 2021, no pet.) (mem. op.); *see* Tex. R. Civ. P. 5.

Granted, the e-filing age has introduced new complexities. Is a document considered “filed” if the e-filing party cancels its electronic transaction before the trial court file-stamps the document? What if the e-filing service provider fails to forward the document to the trial court clerk? In each instance, the plain language of Rule 21(f)(5) makes “[t]ransmi[ssion]” to the e-filing service provider the dispositive act, and “[t]he original transmission date is the effective date regardless of the clerk’s file stamp.” Tex. R. Civ. P. 21(f)(5); *Rawls v. La Fogata Mexican Grill*, 658 S.W.3d 898, 901 (Tex. App.—El Paso 2022, pet. filed); *cf. Jamar v. Patterson*, 868 S.W.2d 318, 319 (Tex. 1993) (recognizing in case involving hard-copy filing that, “[i]n a long line of cases, th[e] court has held that a document is ‘filed’ when it is tendered to the clerk, or otherwise put under the custody or control of the clerk,” regardless of the file stamp).

Texas courts have thus “held that [an] electronically filed document was deemed filed when it was successfully transmitted to the party’s electronic service provider, even if the filing was not accepted due to a technical error, the filing party canceled the electronic filing before the document was received by the clerk, or the document was never forwarded to the clerk.” *Hall v. Lewis*, 639 S.W.3d 197, 207–08 (Tex. App.—Houston [1st Dist.] 2021, no pet.) (holding e-filed petition timely when it was transmitted on the last day of limitations but the clerk rejected it); see *Whitelock v. Stewart*, 661 S.W.3d 583, 594 (Tex. App.—El Paso 2023, pet. filed) (holding e-filed motion for new trial timely even though clerk rejected filing due to formatting noncompliance); *Cummings*, 629 S.W.3d at 302 (holding that “when [a]ppellants transmitted their motion to reinstate to eFileTexas, it was deemed filed” even though appellants later canceled the electronic transaction); *Nevarez Law Firm, P.C. v. Inv’r Land Servs., L.L.C.*, 610 S.W.3d 567, 570–71 (Tex. App.—El Paso 2020) (op. on reh’g) (holding e-filed motion for new trial timely even though filing was initially rejected and was routed to wrong clerk), *op. on merits*, 645 S.W.3d 870 (Tex. App.—El Paso 2022, no pet.); *In re Barr*, No. 05-19-00511-CV, 2019 WL 2082468, at *1–2 (Tex. App.—Dallas May 13, 2019, orig. proceeding) (mem. op.) (holding e-filed motion for new trial timely when it was “transmitted to [the] electronic filing service provider” before the deadline even though the clerk rejected it for insufficient fees and noncompliance).

2. Rule 21(f)(6) permits a transmitted filing to be deemed timely.

This focus on “transmi[ssion]” is “carr[ied] forward” in Rule 21(f)(6). Tex. R. Civ. P. 21(f)(5), (6); *Mincer*, 2022 WL 1573715, at *5 n.4. Under that Rule, “[i]f a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the court.” Tex. R. Civ. P. 21(f)(6). In *Mincer*, we clarified one form of “appropriate relief” that a trial court may grant: deeming a motion for new trial timely. See *Mincer*, 2022 WL 1573715, at *5 n.4.

As a reminder, the trial court in *Mincer* relied on Rule 21(f)(6) to purportedly grant an extension, but on appeal, we noted that an extension would have violated Rule 5. *Id.* Fortunately, though, the trial court had not actually extended the deadline for the appellant’s motion for new trial; rather, it had deemed the motion timely—an appropriate form of relief under Rule 21(f)(6). *Id.*

We explained that Rule 21(f)(6) merely “carr[ies] forward” Rule 21(f)(5)’s linkage between filing and “transmi[ssion].” *Id.*; see Tex. R. Civ. P. 21(f)(5), (6). And although we did not go into detail regarding the nature of the “technical failure or system outage” that had occurred in that case, the problem had not prevented the appellant from timely transmitting her motion to the e-filing service provider. *Mincer*, 2022 WL 1573715, at *5 & n.4. So even though the motion appeared to be untimely, the timely transmission was what mattered, and this allowed the trial court to deem the motion timely without “transgressing Rule 5’s strictures.” *Id.* at *5 n.4.

Mincer highlights a key distinction: deeming a motion timely is not the same thing as granting an extension, nor is it the same as backdating. The time of filing remains the time when the document is “transmitted to the filing party’s electronic filing service provider.” Tex. R. Civ. P. 21(f)(5); see *Mincer*, 2022 WL 1573715, at *5 n.4. When a trial court deems a motion for new trial timely, it is merely “confirm[ing] that [the] filing was timely” transmitted. *Mincer*, 2022 WL 1573715, at *5 n.4. A trial court cannot skirt Rule 5’s prohibition on extensions by backdating a filing or deeming it timely if it was not “transmitted” by the deadline; doing so would be granting an extension by another name. See Tex. R. Civ. P. 5, 21(f)(5); William Shakespeare, *Romeo and Juliet* act 2, sc. 2, l. 43–44 (“[A] rose [b]y any other name would smell as sweet.”); cf. *Justice v. Cicero*, 682 F.3d 662, 664–65 (7th Cir. 2012) (holding trial court erred by backdating filing that was transmitted three hours after midnight deadline and noting that “[a] judge who lacks the authority to grant an extension of time . . . can’t achieve the same end by calling the extension a ‘*nunc pro tunc* order’ and backdating a document”).⁶

⁶The relevant Federal Rules of Civil Procedure do not use the word “transmit,” nor do they use the phrase “technical failure.” See Fed. R. Civ. P. 5, 6. Nonetheless, Federal Rule 6 authorizes an extension if the clerk’s office is “inaccessible”—a word the advisory committee construed to include “an outage of the electronic filing system.” Fed. R. Civ. P. 6(a)(3) (extending deadline by one day “if the clerk’s office is inaccessible” on the last day or hour of filing), advisory committee note to 2009 amend. (noting that “inaccessibility” may include “an outage of the electronic filing system”). Federal courts have rejected litigants’ attempts to claim that their own pre-transmission computer problems constitute “outage[s]” or “inaccessib[ilities].” See, e.g., *Chung v. Lamb*, 794 Fed. App’x 773, 776 (10th Cir. 2019) (holding that the

Our sister court implicitly recognized as much in *Jimenez v. Lewis*. No. 14-17-00347-CV, 2019 WL 546426, at *3 (Tex. App.—Houston [14th Dist.] Feb. 12, 2019, no pet.) (mem. op.). In that case, the appellant provided evidence that she had timely filed a motion for new trial, including “a print-out from her e-file service showing that she filed an ‘envelope’ in this case at 11:48 p.m. on April 20,” minutes before the midnight deadline. *Id.* Later, the appellant discovered that an unknown error prevented her motion from being forwarded to the trial court clerk, so she moved for an extension under Rule 21(f)(6). *Id.* at *2–3. Our sister court recognized that when the trial court purported to grant this extension under Rule 21(f)(6), the appellant’s motion for new trial “[wa]s deemed timely filed on April 20.” *Id.* at *3. In other words, the trial court—restrained by Rule 5—did not actually grant an extension; it applied the “technical failure” provision in Rule 21(f)(6) to recognize that the motion had been timely filed when it was originally transmitted to the e-filing service provider. *See id.*

This interpretation of Rule 21(f)(6) harkens back to the analogous hard-copy mailbox rule. The hard-copy mailbox rule allows a document to be “deemed filed in

appellant’s “misplaced efforts to reach the correct filing platform d[id] not render the clerk’s office inaccessible [so as to qualify for an extension of the filing deadline] any more than entering the wrong street address into her GPS would have if she were attempting to file a paper copy”); *Justice*, 682 F.3d at 665 (“A crash of the lawyer’s computer, or a power outage at 11:50 PM, does not extend the deadline, even though unavailability of the court’s computer can do so under [the inaccessibility provision].”).

time” if the document is placed in the mail before the deadline and “received by the clerk not more than ten days tardily.”⁷ Tex. R. Civ. P. 5. The mailbox rule “does not extend the [deadline or] substantive limitations period,” though; it merely defines when the document is considered to have been filed and recognizes that the party timely filed the document by sending it to the clerk before the deadline. *Warner v. Glass*, 135 S.W.3d 681, 684 (Tex. 2004) (quoting *Danesh v. Hous. Health Clubs, Inc.*, 859 S.W.2d 535, 537 (Tex. App.—Houston [1st Dist.] 1993, writ ref’d)).

Rule 21(f)(6)’s “technical failure” provision similarly contemplates the clerk’s receiving a document after the deadline despite the document’s timely transmission to the e-filing service provider. *See* Tex. R. Civ. P. 21(f)(6). Under the plain language of Rule 21(f)(5), the document is “deemed [timely] filed” because—regardless of the clerk’s file stamp—the document was “transmitted to the filing party’s electronic filing service provider” before the deadline. Tex. R. Civ. P. 21(f)(5); *see Hall*, 639 S.W.3d at 207–08 (noting that appellate courts “have uniformly held that the electronically filed document was deemed filed when it was successfully transmitted to the party’s electronic service provider”).

⁷While the hard-copy mailbox rule has a ten-day cap, the e-filing rule has no such cap, as the electronic document is deemed filed immediately upon “transmi[ssion]” (unless the date of transmission is a weekend or holiday, or the document requires an order to authorize its filing). Tex. R. Civ. P. 5, 21(f)(5); *see Cummings*, 629 S.W.3d at 300.

Consistent with the plain language of Rules 5, 21(f)(5), and 21(f)(6), then, Allstate could seek “appropriate relief” from the trial court by asking that its motion for new trial be deemed timely if, despite timely transmission, the motion was tardily file-stamped due to a “technical failure.” Tex. R. Civ. P. 21(f)(5), (6); *see* Tex. R. Civ. P. 5.

3. A localized, pre-transmission problem is not a “technical failure.”

The parties contest what constitutes a “technical failure.” Tex. R. Civ. P. 21(f)(6). The term is not defined in the Rules of Civil Procedure, and the Texas Supreme Court has not analyzed its meaning. *See id.* We need not define it either, though, because whatever the contours of its boundaries, logic dictates that—at least in the context of a motion for new trial—a pre-transmission problem on a party’s local computer cannot constitute a “technical failure” that warrants the “appropriate relief” of deeming the motion timely. *Id.* If the pre-transmission problem is the cause of the party’s untimeliness, then it necessarily prevented the filing party from timely transmitting its motion for new trial to the e-filing service provider, and a trial court cannot rewrite history by deeming the document timely. Timely “transmi[ssion]” remains key. Tex. R. Civ. P. 21(f)(5).

4. Allstate’s corrupted file was a localized, pre-transmission problem.

Allstate’s corrupted file was a pre-transmission problem on its local computer; Allstate did not “transmit[]” anything to the e-filing service provider before the deadline had already passed. *See id.*

A document is “transmitted” when it is “sen[t]” or “caused to go or be conveyed to another person or place.” *Transmit*, Webster’s Third New International Dictionary Unabridged 2429 (reprt. 2021) (1961); *see Transmit*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/transmit> (last visited Oct. 4, 2023) (defining “transmit” as, among other things, “to send or convey from one person or place to another”). And Allstate did not even attempt to “send or convey” its motion to its e-filing service provider until two hours and fifty minutes after the deadline had passed. *See Transmit*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/transmit> (last visited Oct. 4, 2023).

But Allstate—seemingly recognizing the importance of transmission—attempts to reframe its corrupted-file issue as a flaw in the transmission process. Allstate emphasizes that it was required to file its motion electronically and that it discovered that the file had become corrupted only at the 11th hour when it logged into its e-filing service provider’s website and realized that it could not upload the document. It thus argues that it had “started the process of filing its [m]otion” before the midnight deadline but that the corrupted file prevented the successful completion of the process. According to Allstate, “[d]efense counsel going onto [the e-filing service provider’s website] and attempting to upload the [corrupted] document [wa]s the same as [d]efense counsel going to the post office and mailing the motion.” We disagree.

Attempting to upload a corrupted file does nothing to actually “send or convey” that document to the e-filing service provider. *See id.* By Allstate’s own account, the corrupted file could not be saved, displayed,⁸ or uploaded. The fact that Allstate may have discovered the corrupt nature of its file after navigating to its e-filing service provider’s website does not transform the corrupted file into a transmission-related issue. The corrupted file had nothing to do with the trial court’s processes, the e-filing service provider’s processes, or any other court-approved carrier’s processes. It is not “the same as . . . going to the post office and mailing the motion”; it is analogous to taking the motion to the post office and then realizing that the dog in the backseat ate the motion you had intended to mail.

The plain language of Rule 21(f)(5) requires more than logging into the e-filing service provider’s website; it requires “transmi[ssion].” Tex. R. Civ. P. 21(f)(5). Because the computer problem that Allstate encountered occurred prior to transmission and had nothing to do with the trial court or e-filing service provider, the issue was not a “technical failure” that could support deeming the motion timely under Rule 21(f)(6). *See* Tex. R. Civ. P. 21(f)(5), (6); *Mincer*, 2022 WL 1573715, at *5 n.4.

⁸Allstate does not expressly state that its motion for new trial could not be displayed, but we extrapolate as much from its description of recreating the motion “based, in part, on earlier drafts that [its counsel] had previously printed out.”

Allstate's motion for new trial was therefore untimely. *See* Tex. R. Civ. P. 21(f)(5), (6).

C. Imprudence of a New Course

We take no pleasure in this outcome. Generally, “[i]t is our policy to construe [and apply] rules reasonably but liberally, when possible, so that the right to appeal is not lost” unnecessarily. *Jamar*, 868 S.W.2d at 319 (interpreting the term “filed” in Tex. R. Civ. P. 329b); *see Mitschke*, 645 S.W.3d at 261–62 (similar, quoting *Verburgt v. Dorner*, 959 S.W.2d 615, 616–17 (Tex. 1997)). But “[b]eing timely . . . is no mere technicality; it remains essential.” *Mitschke*, 645 S.W.3d at 261 (emphasis removed) (contrasting untimeliness with party's misfiling of timely motion for trial).

The plain language of Rule 5 prohibits extending the deadline for transmission of a motion for new trial, the plain language of Rule 21(f)(5) ties the act and time of filing to “transmi[ssion],” and the plain language of Rule 21(f)(6) carries that principle forward. *See* Tex. R. Civ. P. 5, 21(f)(5), (6). These Rules are promulgated by the Texas Supreme Court—not this court. *See* Tex. Const. art. V, § 31 (authorizing Texas Supreme Court—not this court—to promulgate rules of procedure); Tex. Gov't Code Ann. § 22.003 (similar). We are no more at liberty to ignore the plain language of the Rules than we are to ignore binding precedent. And here, both dictate that Allstate missed a hard-and-fast deadline that rendered its notice of appeal untimely.⁹ *See* Tex.

⁹Although the deadline for a motion for new trial is hard and fast, a party that misses the deadline by mere hours is not entirely out of luck. The deadline to file a

R. App. P. 26.1; Tex. R. Civ. P. 5, 329b(a); *Mincer*, 2022 WL 1573715, at *5 n.4. We cannot rewrite the Rules to change this result.

Nor would it be wise to do so in this case. If the time of “transmi[ssion]” were no longer determinative, what amount of time could be overlooked due to an alleged “technical failure”? *See* Tex. R. Civ. P. 21(f)(5), (6). What if Allstate had discovered its corrupted document several days earlier but had still failed to recreate its draft until 2:50 a.m.? Or what if Allstate had taken a full week to recreate its corrupted motion for new trial?

By the same token, if the term “technical failure” were construed to encompass pre-transmission computer issues, the universe of “technical failure[s]” would be boundless. A party’s accidental deletion of a document, its failure to hit “save” on an updated draft,¹⁰ and even its dead laptop battery could all warrant deeming a motion

notice of appeal is not subject to Rule 5’s prohibition on extensions, *see* Tex. R. Civ. P. 5, and we liberally grant extensions—even retroactive ones—requested within 15 days after a notice of appeal is due. *See* Tex. R. App. P. 26.3; *Verburgt*, 959 S.W.2d at 616–17. Had Allstate promptly filed a notice of appeal upon realizing that its motion for new trial was in jeopardy of being construed as untimely—even if simply as a belt-and-suspenders approach—then the jurisdictional issue before us would almost certainly be moot.

¹⁰This hypothetical is particularly relevant here because Allstate claims that its inability “to save the final version of the document” is what led to its discovery that the final version “had become corrupted.” It is unclear if prior versions of the motion were corrupted as well.

timely—which, again, would equate to backdating the time of filing.¹¹ While pre-transmission computer issues may provide good cause for an extension when one is available, *see* Tex. R. App. P. 10(b), 26.3; Tex. R. Civ. P. 5, they cannot change the objective, historical fact that the party failed to “transmit[]” its document to the e-filing service provider before the deadline. *See* Tex. R. Civ. P. 21(f)(5).

Furthermore, Allstate had options. Nothing prevented Allstate from filing a three-sentence motion for new trial before the midnight deadline and following it up with a brief that detailed its argument and authorities—particularly since, in the end, Allstate’s argument and authorities were substantially similar to those in its previously-filed objections to Dollard’s motion for attorney’s fees. Nothing prevented Allstate from filing a timely, bare-bones notice of appeal before the midnight deadline either. *See* Tex. R. App. P. 26.1. Even if it had filed an untimely notice of appeal at 2:50 a.m. the following morning—or anytime within the 15 days that followed the deadline—this court would have had the discretion to grant a retroactive extension and consider Allstate’s appeal on its merits. *See* Tex. R. App. P. 26.3; *Verburgt*, 959 S.W.2d at 616–17. The Rules of Appellate and Civil Procedure thus provided Allstate with multiple

¹¹Such events could threaten the timeliness of hard-copy filings as well, but Allstate has not cited any case law in which a hard-copy filing was deemed timely due to computer problems. *Cf.* Lamont A Jefferson, *Trends and Traps in Rules of Civil Procedure*, 70 *The Advoc.* (Tex.) 48, 58 n.127 (2015) (noting that “if the filing party’s hard drive containing the document . . . crashes” and that qualifies as a “technical failure,” then the Rules “give substantially more leniency to e-filing” even though the “problem [c]ould equally affect a paper-filed document”).

tools to rectify its procrastination and computer problems, but deeming the motion for new trial as transmitted and thus timely filed was not one of them. *See* Tex. R. Civ. P. 5.

In short, there is wisdom in the Texas Supreme Court's decision to establish a clear and fixed deadline for filing a motion for new trial. *See* Tex. R. Civ. P. 5, 21(f)(5), 329b(a). We have neither the authority nor the inclination to chart a new course.

III. Conclusion

Because Allstate did not “transmit[its motion for new trial] to the filing party’s electronic filing service provider” within “thirty days after the judgment . . . [wa]s signed,” Tex. R. Civ. P. 21(f)(5), 329b(a), because the trial court could “not enlarge the period for taking any action under the rules relating to new trials,” Tex. R. Civ. P. 5, and because the motion for new trial could not be deemed timely based on a “technical failure or a system outage,” Tex. R. Civ. P. 21(f)(6), Allstate’s motion for new trial was untimely. *See* Tex. R. Civ. P. 329b(a). The motion therefore did not extend the deadline for Allstate’s notice of appeal, and that filing, too, was untimely. *See* Tex. R. App. P. 26.1.

“[A]bsent a timely[] filed notice of appeal . . . , we must dismiss the appeal.” *Manning*, 2022 WL 1573486, at *1 (quoting *Mitchell*, 2022 WL 1183342, at *1). Accordingly, we dismiss Allstate’s appeal for want of jurisdiction. *See* Tex. R. App. P. 42.3(a), 43.2(f).

/s/ Bonnie Sudderth

Bonnie Sudderth
Chief Justice

Delivered: October 19, 2023