

FOURTH COURT OF APPEALS OF TEXAS AT SAN ANTONIO

Ex Parte C.D.R.

No. 04-19-00457-CV · No. 04-19-00457-CV · Decided August 26, 2019

SUMMARY

The Fourth Court of Appeals of Texas ordered the appellant in an appeal from a Val Verde County judgment to provide a reasonable explanation for filing the notice of appeal after the deadline under Texas Rule of Appellate Procedure 26.1. The court warned that failure to respond within fifteen days would result in dismissal and suspended all other appellate deadlines.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas at San Antonio
WRITING FOR THE COURT	Rebeca C. Martinez
JURISDICTION	Texas
DECIDED	August 26, 2019
DOCKET	04-19-00457-CV
DISPOSITION	other
PROCEDURAL POSTURE	The court issued an order addressing the timeliness of appellant's notices of appeal from a final judgment and directing appellant to provide a reasonable explanation for the late filing.
PRECEDENTIAL VALUE	Published
PARTIES	C.D.R.

TOPICS

- appellate procedure
- final judgment rule
- civil procedure

PRACTICE AREAS

- Appellate procedure
- Civil procedure

QUESTIONS PRESENTED

- Whether notices of appeal filed after the Rule 26.1 deadline but within the Rule 26.3 fifteen-day grace period may be treated as accompanied by an implied motion for extension.
- Whether appellant must provide a reasonable explanation for failing to file the notice of appeal timely.

HOLDINGS

1. When an appellant acting in good faith files a notice of appeal after the Rule 26.1 deadline but within the fifteen-day period provided by Rule 26.3, a motion for extension of time is necessarily implied.
2. An appellant who relies on the implied motion for extension must offer a reasonable explanation for failing to file the notice of appeal timely.

KEY QUOTATIONS

“A motion for extension of time is necessarily implied when an appellant, acting in good faith, files a notice of appeal beyond the time allowed by Rule 26.1 but within the fifteen-day grace period provided by Rule 26.3 for filing a motion for extension of time.” (Order)

“However, the appellant must offer a reasonable explanation for failing to file the notice of appeal in a timely manner.” (Order)

FACTUAL BACKGROUND

The trial court signed a final judgment on May 30, 2019. The notice of appeal was due July 1, 2019, but appellant filed two notices on July 2 and July 3. Both notices included certificates of service dated July 1, and neither filing was accompanied by a motion for extension of time.

PROCEDURAL HISTORY

The 63rd Judicial District Court of Val Verde County signed a final judgment on May 30, 2019. Appellant filed notices of appeal on July 2 and July 3, 2019, after the July 1 deadline under Texas Rule of Appellate Procedure 26.1, but within the fifteen-day grace period for filing a motion for extension under Rule 26.3. Because no motion for extension was filed, the court ordered appellant to respond with a reasonable explanation for the untimely notice and warned that the appeal would be dismissed if no timely response was filed.

DISPOSITION

other

REMAND INSTRUCTIONS

Appellant was ordered to file, within fifteen days from August 26, 2019, a response presenting a reasonable explanation for the untimely notice of appeal. If appellant failed to respond within that period, the appeal would be dismissed. All other appellate deadlines were suspended until further order.

CASES CITED

- Verburgt v. Dorner, 959 S.W.2d 615, 617 (Tex. 1997)

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas August 26, 2019 No. 04-19-00457-CV EX PARTE C.D.R. From the 63rd Judicial District Court, Val Verde County, Texas Trial Court No. 33751 Honorable Enrique Fernandez, Judge Presiding ORDER The trial court signed a final judgment on May 30, 2019.

Therefore, the notice of appeal was due to be filed on July 1, 2019. See TEX. R. APP. P. 26.1. A motion for extension of time to file the notice of appeal was due on July 16, 2019. See TEX. R. APP. P. 26.3. Appellant filed two notices of appeal.

The first notice includes a certificate of service, which is dated July 1, 2019, but the notice was filed on July 2, 2019. The second notice amends the caption and includes a certificate of service, which is also dated July 1, 2019, but the notice was filed on July 3, 2019.

Although appellant filed his notices of appeal within the fifteen-day grace period allowed by Rule 26.3, he did not file a motion for extension of time. A motion for extension of time is necessarily implied when an appellant, acting in good faith, files a notice of appeal beyond the time allowed by Rule 26.1 but within the fifteen-day grace period provided by Rule 26.3 for filing a motion for extension of time.

See *Verburt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997) (construing the predecessor to Rule 26). However, the appellant must offer a reasonable explanation for failing to file the notice of appeal in a timely manner. See *id.*; TEX. R. APP. P. 26.3, 10.5(b)(1)(C). It is therefore ORDERED that appellant file, within fifteen days from the date of this order, a response presenting a reasonable explanation for failing to file a notice of appeal in a timely manner.

If appellant fails to respond within the time provided, the appeal will be dismissed. See TEX. R. APP. P. 42.3(c). All other appellate deadlines are suspended until further order of this court.

Rebeca C. Martinez, Justice IN WITNESS WHEREOF,
I have hereunto set my hand and affixed the seal of the said court on this 26th day of August, 2019. _____ Keith E. Hottle, Clerk of Court