

# 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)