

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

In the Interest of A.M.E.

No. 04-14-00036-CV (Tex. App.—San Antonio Apr. 2, 2014) · No. No. 04-14-00036-CV · Decided April 2, 2014

SUMMARY

The Texas Fourth Court of Appeals dismissed an appeal from a final judgment in a child-protection matter. The court held that the notice of restricted appeal was untimely and, although filed within the grace period, the appellant failed to provide the required reasonable explanation for the delay.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourth District, San Antonio
WRITING FOR THE COURT	Per Curiam; Karen Angelini, Justice; Sandee Bryan Marion, Justice; Marialyn Barnard, Justice
JURISDICTION	Texas
DECIDED	April 2, 2014
DOCKET	No. 04-14-00036-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellant filed a restricted appeal from a final judgment after the deadline for filing a notice of restricted appeal had expired. The court ordered appellant to provide a reasonable explanation for the untimely filing, but appellant did not respond.
PRECEDENTIAL VALUE	Memorandum opinion; no standard reporter citation appears in the provided text.

TOPICS

- appellate procedure
- final judgment rule
- family law procedure
- civil procedure

PRACTICE AREAS

- family law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the restricted appeal should be dismissed when the notice of appeal was filed after the six-month deadline and the appellant failed to provide a reasonable explanation for the untimely filing.

HOLDINGS

1. A notice of restricted appeal filed after the six-month deadline may be treated as accompanied by an implied motion for extension when filed within the fifteen-day grace period, but the appellant must provide a reasonable explanation for the late filing. Because appellant failed to provide that explanation after being ordered to do so, the appeal was dismissed.

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 Texas Rule of Appellate Procedure 26.1 but within the fifteen-day grace period provided by Rule 26.3 for filing a motion for extension of time.” (-2)

FACTUAL BACKGROUND

The trial court signed a final judgment on July 10, 2013. Appellant filed a notice of restricted appeal on January 14, 2014, after the applicable six-month filing deadline had expired. The appellate court ordered appellant to provide a reasonable explanation for the untimely filing, but appellant failed to respond.

PROCEDURAL HISTORY

The 224th Judicial District Court of Bexar County signed a final judgment on July 10, 2013. Appellant filed a notice of restricted appeal on January 14, 2014, four days after the six-month deadline. Although the notice was filed within the fifteen-day grace period for seeking an extension, appellant did not file a motion for extension or respond to the appellate court's order requesting a reasonable explanation. The court dismissed the appeal.

DISPOSITION

dismissed

CASES CITED

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

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas MEMORANDUM OPINION No. 04-14-00036-CV IN THE INTEREST OF A.M.E. From the 224th Judicial District Court, Bexar County, Texas Trial Court No. 2009-PA-00043 Honorable Barbara Hanson Neller-moe, Judge Presiding PER CURIAM Sitting: Karen Angelini, Justice Sandee Bryan Marion, Justice Marialyn Barnard, Justice Delivered and Filed: April 2, 2014 DISMISSED The trial court signed a final judgment on July 10, 2013.

On January 14, 2014, appellant filed a notice of restricted appeal. A notice of restricted appeal must be filed within six months after the judgment is signed. See TEX. R. APP. P. 26.1(c). Therefore, the notice of appeal was due to be filed on January 10, 2014, four days before appellant

filed his notice of appeal. A motion for extension of time to file the notice of appeal was due on January 27, 2014.

See TEX. R. APP. P. 26.3. Although appellant filed a notice 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 Texas Rule of Appellate Procedure 26.1 but within the fifteen-day grace period provided by Rule 26.3 for filing a motion for extension of 04-14-00036-CV time.

See *Verburgt 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).

Therefore, on February 24, 2014, we ordered appellant to file, within fifteen days, a response presenting a reasonable explanation for failing to file the notice of appeal in a timely manner. We explained that if appellant failed to respond within the time provided, the appeal would be dismissed. See TEX. R. APP. P. 42.3(c). Appellant failed to respond.

We therefore dismiss this appeal. PER CURIAM -2-