

COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS
CHRISTI-EDINBURG

Adan Esquibel v. The State of Texas

Esquibel · No. 13-09-00505-CV · Decided December 21, 2009

SUMMARY

The Thirteenth Court of Appeals of Texas dismissed Adan Esquibel’s appeal for want of jurisdiction because the notice of appeal was filed after the applicable deadline and outside the fifteen-day grace period for requesting an extension. The court denied the motion for extension of time and held that the appellate filing deadlines were jurisdictional.

CASE DETAILS

COURT	Court of Appeals of Texas, Thirteenth District, Corpus Christi-Edinburg
WRITING FOR THE COURT	Per Curiam; Chief Justice Valdez; Justice Rodriguez; Justice Garza
JURISDICTION	Texas
DECIDED	December 21, 2009
DOCKET	13-09-00505-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellant attempted to appeal a judgment of the County Court at Law No. 2 of Hidalgo County, Texas, but filed the notice of appeal after the deadline and outside the applicable grace period.
STANDARD OF REVIEW	The court applied the jurisdictional time limits governing notices of appeal and extension requests; because those requirements were not satisfied, dismissal was mandatory.
PRECEDENTIAL VALUE	Published memorandum opinion; no reporter citation appears in the source text.
PARTIES	Adan Esquibel v. The State of Texas

TOPICS

- appellate jurisdiction
- appellate procedure
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court of appeals had jurisdiction when the notice of appeal was filed after the deadline under Texas Rule of Appellate Procedure 26.1 and after the fifteen-day grace period for requesting an extension under Rule 26.3.
2. Whether appellant's September 21, 2009 filings could be treated as a timely motion for extension of time to file the notice of appeal.

HOLDINGS

1. The court lacked jurisdiction because appellant filed the notice of appeal after the Rule 26.1 deadline and did not timely invoke the fifteen-day extension period under Rule 26.3.
2. The court construed appellant's September 21, 2009 filings as a motion for extension of time, but denied the motion because it was not filed within the Rule 26.3 grace period.

KEY QUOTATIONS

“The times for filing a notice of appeal are jurisdictional, and absent a timely filed notice of appeal or an extension request, we must dismiss the appeal.” (at 2)

“The Court, having examined and fully considered the documents on file, is of the opinion that the appeal should be dismissed for want of jurisdiction.” (at 3)

FACTUAL BACKGROUND

The lower court signed its judgment on November 4, 2008, and appellant did not file a motion for new trial. The notice of appeal was due December 4, 2008, but appellant did not file it until July 31, 2009. After being notified of the filing defect, appellant filed a letter and an application to proceed in forma pauperis on September 21, 2009; the court construed those filings as a motion for extension, but they were filed outside the fifteen-day grace period.

PROCEDURAL HISTORY

The County Court at Law No. 2 of Hidalgo County signed judgment on November 4, 2008. No motion for new trial was filed, making the notice of appeal due December 4, 2008. Appellant filed the notice of appeal on July 31, 2009, and later filed documents construed as a motion for extension of time, but those documents were filed after the fifteen-day grace period. The court of appeals denied the extension motion and dismissed the appeal for want of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- *Verburgt v. Dorner*, 959 S.W.2d 615, 617-18, 619 (Tex. 1997)
- *Woodard v. Higgins*, 140 S.W.3d 462, 462 (Tex. App.—Amarillo 2004, no pet.)
- *In re B.G.*, 104 S.W.3d 565, 567 (Tex. App.—Waco 2002, no pet.)
- *Barrera v. Canales*, No. 04-01-00221-CV, 2001 Tex. App. LEXIS 3878, *2 (Tex. App.—San Antonio June 13, 2001, no pet.)

OPINION

PER CURIAM.

NUMBER 13-09-00505-CV COURT OF APPEALS THIRTEENTH DISTRICT OF TEXAS
CORPUS CHRISTI - EDINBURG
ADAN ESQUIBEL,

Appellant, v. THE STATE OF TEXAS, Appellee.

On appeal from the
County Court at Law No. 2 of Hidalgo County, Texas.

MEMORANDUM

OPINION Before Chief Justice Valdez and Justices Rodriguez and Garza Memorandum Opinion
Per Curiam Appellant, Adan Esquibel, attempted to perfect an appeal from a judgment entered by the County Court at Law No. 2 in Hidalgo County, Texas, in cause number F-2923-00-2.

Judgment in this cause was signed on November 4, 2008. No motion for new trial was filed. Pursuant to Texas Rule of Appellate Procedure 26.1, appellant's notice of appeal was due on December 4, 2008, but was not filed until July 31, 2009. 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 *Verburgt v. Dorner*, 959 S.W.2d 615, 617-18, 619 (1997) (construing the predecessor to Rule 26). However, appellant must provide a reasonable explanation for the late filing: it is not enough to simply file a notice of appeal. *Id.*; *Woodard v. Higgins*, 140 S.W.3d 462, 462 (Tex. App.—Amarillo 2004, no pet.); *In re B.G.*, 104 S.W.3d 565, 567 (Tex. App.—Waco 2002, no pet.).

On September 4, 2009, the Clerk of this Court notified appellant of this defect so that steps could be taken to correct the defect, if it could be done. Appellant was advised that, if the defect was not corrected within fifteen days from the date of the Court's letter, the appeal would be dismissed.

On September 21, 2009, appellant filed a letter stating that his environment did not allow him expediency, asking if he should file a motion for extension of time to comply and filed an application to proceed in forma pauperis. This Court construes appellant's September 21, 2009 filings as a motion for extension of time to file the appeal, however the notice of appeal was not filed within the fifteen-day grace period.

The times for filing a notice of appeal are jurisdictional, and absent a timely filed notice of appeal or an extension request, we must dismiss the appeal. See TEX. R. APP. P. 2, 25.1(b), 26.3; *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997) (holding that 2 once extension period has passed, a party can no longer invoke an appellate court's jurisdiction); see also *Barrera v. Canales*, No. 04-01-00221-CV, 2001 Tex. App.

LEXIS 3878, *2 (Tex. App.—San Antonio June 13, 2001, no pet.) (per curiam). The Court, having examined and fully considered the documents on file, is of the opinion that the appeal should be dismissed for want of jurisdiction.

Accordingly, appellant's motion for extension of time to file notice of appeal is DENIED, and the appeal is hereby DISMISSED FOR WANT OF JURISDICTION. See TEX. R. APP. P. 42.3(a)(c). PER CURIAM Delivered and filed the 21st day of December, 2009. 3