

FOURTEENTH COURT OF APPEALS OF TEXAS

George Schilter, in His Capacity as the Independent Executor of the Estate of Kathrin Gvadia, Deceased v. Zachary T. Dixon

No. 14-22-00688-CV · No. No. 14-22-00688-CV · Decided November 3, 2022

SUMMARY

The Fourteenth Court of Appeals of Texas ordered the appellant to file a motion to extend the deadline for filing a notice of appeal. The court explained that although an extension motion is implied when the notice is filed within 15 days of the deadline, the appellant must provide a reasonable explanation for the late filing, or the appeal may be dismissed for want of jurisdiction.

CASE DETAILS

COURT	Fourteenth Court of Appeals of Texas
WRITING FOR THE COURT	Justice Wise; Justice Jewell; Justice Poissant
JURISDICTION	Texas
DECIDED	November 3, 2022
DOCKET	No. 14-22-00688-CV
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from a June 13, 2022 judgment of the 151st District Court of Harris County. The appellant filed the notice of appeal after the ordinary deadline but within fifteen days after that deadline.
PRECEDENTIAL VALUE	Published per curiam appellate order; no reporter citation appears in the source.
PARTIES	George Schilter, in his capacity as the independent executor of the Estate of Kathrin Gvadia, Deceased v. Zachary T. Dixon

TOPICS

[appellate procedure](#)[appellate jurisdiction](#)[civil procedure](#)[probate procedure](#)

PRACTICE AREAS

[Appellate procedure](#)[Civil procedure](#)[Probate](#)

QUESTIONS PRESENTED

1. Whether a motion for extension of time to file a notice of appeal is implied when the notice is filed within fifteen days after the appellate deadline.
2. Whether the appellant must provide a reasonable explanation for the late filing and be ordered to file a proper motion for extension before the appeal may proceed.

HOLDINGS

1. When a notice of appeal is filed within fifteen days after its due date, a motion for extension of time is necessarily implied under Texas Rule of Appellate Procedure 26.3.
2. Although an extension may be implied, the appellant remains obligated to provide a reasonable explanation supporting the late filing.

KEY QUOTATIONS

“A motion for extension of time is necessarily implied when the perfecting instrument is filed within 15 days of its due date.”

“While an extension may be implied, appellant is still obligated to come forward with a reasonable explanation to support the late filing.”

FACTUAL BACKGROUND

The appeal arose from a judgment signed on June 13, 2022. Appellant timely filed a post-judgment motion, making the notice of appeal due September 12, 2022. Appellant filed the notice of appeal on September 23, 2022, within fifteen days after the filing deadline, but did not file a motion for extension or provide a reasonable explanation for the late filing.

PROCEDURAL HISTORY

The 151st District Court of Harris County signed a judgment on June 13, 2022. After filing a timely post-judgment motion, appellant's notice of appeal was due September 12, 2022, but was filed September 23, 2022. The court of appeals ordered appellant to file a motion for extension supported by a reasonable explanation within ten days and warned that failure to do so would subject the appeal to dismissal for want of jurisdiction.

DISPOSITION

other

REMAND INSTRUCTIONS

Appellant was ordered to file a proper motion to extend the time to file the notice of appeal within ten days of November 3, 2022. If appellant failed to do so, the appeal would be subject to dismissal without further notice for want of jurisdiction.

CASES CITED

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

- Miller v. Greenpark Surgery Center Assocs., Ltd., 974 S.W.2d 805, 808 (Tex. App.—Houston [14th Dist.] 1998, no pet.)

OPINION

George Schilter, in His Capacity as the Independent of the Estate of Kathrin Gvadia v. Zachary T. Dixon

PER CURIAM.

Order filed November 3, 2022 In The Fourteenth Court of Appeals _____

NO. 14-22-00688-CV

GEORGE SCHILTER, IN HIS CAPACITY AS THE INDEPENDENT

EXECUTOR OF THE ESTATE OF KATHRIN GVADIA,

DECEASED, Appellant V. ZACHARY T. DIXON, Appellee On Appeal from the 151st District Court Harris County, Texas Trial Court Cause No. 2020-79584

ORDER

This is an appeal from a judgment signed June 13, 2022. Appellant timely filed a post-judgment motion. The notice of appeal was due September 12, 2022. See Tex. R. App. P. 26.1. Appellant, however, filed the notice of appeal on September 23, 2022, a date within 15 days of the due date for the notice of appeal. A motion for extension of time is necessarily implied when the perfecting instrument is filed within 15 days of its due date. *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997). Appellant did not file a motion to extend time to file the notice of appeal. While an extension may be implied, appellant is still obligated to come forward with a reasonable explanation to support the late filing. See *Miller v. Greenpark Surgery Center Assocs., Ltd.*, 974 S.W.2d 805, 808 (Tex. App.— Houston [14th Dist.] 1998, no pet.). Accordingly, we order appellant to file a proper motion to extend time to file the notice of appeal within ten (10) days of the date of this order. See Tex. R. App. P. 26.3;10.5(b). If appellant fails to do so, the appeal is subject to dismissal without further notice for want of jurisdiction. See Tex. R. App. P. 42.3(a).

PER CURIAM

Panel Consists of Justices Wise, Jewell, and Poissant.