

FOURTH COURT OF APPEALS OF TEXAS, SAN ANTONIO

David Gene Becka v. The State of Texas

No. 04-22-00725-CV · No. 04-22-00725-CV · Decided November 10, 2022

SUMMARY

The Fourth Court of Appeals of Texas granted David Gene Becka’s motion for an extension of time to file his notice of appeal. The court deemed the notice timely under Texas Rule of Appellate Procedure 26.3 after finding that it was filed within the applicable fifteen-day extension period and that the appellant provided a reasonable explanation.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas, San Antonio
WRITING FOR THE COURT	Patricia O. Alvarez
JURISDICTION	Texas
DECIDED	November 10, 2022
DOCKET	04-22-00725-CV
DISPOSITION	other
PROCEDURAL POSTURE	Appellant sought an extension of time to file a late notice of appeal from the 144th Judicial District Court of Bexar County. The court of appeals granted the extension and deemed the notice of appeal timely filed.
PRECEDENTIAL VALUE	Published
PARTIES	David Gene Becka v. The State of Texas

TOPICS

- appellate procedure
- civil procedure

PRACTICE AREAS

- appellate procedure
- civil procedure

QUESTIONS PRESENTED

- Whether appellant's late notice of appeal should be deemed timely when it was filed within fifteen days after the deadline and appellant provided a reasonable explanation for the requested extension.

HOLDINGS

1. A motion for extension of time to file the notice of appeal was properly granted because the notice was filed within fifteen days after it was due and appellant provided the required reasonable explanation for the extension.

KEY QUOTATIONS

“Appellant’s motion for extension of time to file the notice of appeal is GRANTED; the notice is deemed timely filed.”

FACTUAL BACKGROUND

Appellant filed a notice of appeal after the applicable deadline. The notice was filed within fifteen days after it was due. After being directed to provide a reasonable explanation for the delay, appellant timely filed a response supporting an extension.

PROCEDURAL HISTORY

The notice of appeal was filed late but within fifteen days after the filing deadline. In a prior order, the court advised appellant of the untimeliness, implied a motion for extension, and ordered appellant to provide a reasonable explanation for the need for an extension. Appellant timely responded, and the court granted the motion.

DISPOSITION

other

CASES CITED

- Verburgt v. Dorner, 959 S.W.2d 615, 617 (Tex. 1997)
- In re E.K.C., 486 S.W.3d 614, 616 (Tex. App.—San Antonio 2016, no pet.)
- Garcia v. Kastner Farms, Inc., 774 S.W.2d 668, 670 (Tex. 1989)

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas November 10, 2022 No. 04-22-00725-CV David Gene BECKA, Appellant v. The STATE of Texas, Appellee From the 144th Judicial District Court, Bexar County, Texas Trial Court No. 2019CR1257 Honorable Andrew Wyatt Carruthers, Judge Presiding ORDER In our November 8, 2022 order, we advised Appellant that his notice of appeal was late, but it was filed within fifteen days after the notice was due.

See TEX. R. APP. P. 26.3. We implied a motion for extension of time, see Verburgt v. Dorner, 959 S.W.2d 615, 617 (Tex. 1997), and we ordered Appellant to file a motion for extension of time that

reasonably explains the need for an extension. See TEX. R. APP. P. 26.3 (citing TEX. R. APP. P. 10.5(b)); In re E.K.C., 486 S.W.3d 614, 616 (Tex. App.—San Antonio 2016, no pet.).

Appellant timely filed a response. Appellant's motion for extension of time to file the notice of appeal is GRANTED; the notice is deemed timely filed. See TEX. R. APP. P. 26.3; Garcia v. Kastner Farms, Inc., 774 S.W.2d 668, 670 (Tex. 1989). _____

Patricia O. Alvarez, Justice IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 10th day of November, 2022.

_____ MICHAEL A. CRUZ, Clerk of Court