

## COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

### Templeton Mortgage Corporation v. Gary M. Poenisch

No. 04-15-00041-CV (Tex. App.—San Antonio Mar. 4, 2015) · No. No. 04-15-00041-CV · Decided March 4, 2015

#### SUMMARY

The Texas Fourth Court of Appeals ordered that the clerk’s record from a companion appeal be placed in this appeal because the severed trial-court record was incomplete. The court also ordered Templeton Mortgage Corporation to provide a reasonable explanation for its apparently untimely notice of appeal and warned that the appeal would be dismissed if no timely response was filed.

#### CASE DETAILS

|                       |                                                                                                                                                                                                               |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of Texas, Fourth District, San Antonio                                                                                                                                                       |
| WRITING FOR THE COURT | Karen Angelini                                                                                                                                                                                                |
| JURISDICTION          | Texas                                                                                                                                                                                                         |
| DECIDED               | March 4, 2015                                                                                                                                                                                                 |
| DOCKET                | No. 04-15-00041-CV                                                                                                                                                                                            |
| DISPOSITION           | other                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Appeal from a default judgment entered against Templeton Mortgage Corporation. The appellate court issued an order requiring the appellant to explain the apparently untimely filing of its notice of appeal. |
| PRECEDENTIAL VALUE    | Published opinion                                                                                                                                                                                             |
| PARTIES               | Templeton Mortgage Corporation v. Gary M. Poenisch                                                                                                                                                            |

#### TOPICS

[appellate procedure](#)[final judgment rule](#)[motion for new trial](#)[default judgment](#)[civil procedure](#)

#### PRACTICE AREAS

[Appellate procedure](#)[Civil procedure](#)[Commercial litigation](#)

#### QUESTIONS PRESENTED

1. Whether Templeton's notice of appeal was untimely and whether a motion for extension of time was implied under Texas Rule of Appellate Procedure 26.3.
2. Whether Templeton had to provide a reasonable explanation for its failure to timely file the notice of appeal.

## HOLDINGS

1. When an appellant acting in good faith files a notice of appeal after the deadline in Texas Rule of Appellate Procedure 26.1 but within the fifteen-day grace period in Rule 26.3, a motion for extension of time is necessarily implied.
2. An appellant seeking the benefit of an implied extension must offer a reasonable explanation for failing to timely file the notice of appeal.

## 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.”*

*“However, the appellant must offer a reasonable explanation for failing to file the notice of appeal in a timely manner.”*

## FACTUAL BACKGROUND

The trial court entered a default judgment for Gary Poenisch against Templeton Mortgage Corporation and severed Poenisch's claims into cause number 10-422-A. Templeton filed its motion for new trial after the apparent deadline and filed its notice of appeal on January 16, 2015, beyond the ordinary deadline under Texas Rule of Appellate Procedure 26.1(a) but within the fifteen-day grace period associated with Rule 26.3.

## PROCEDURAL HISTORY

The trial court entered a default judgment in favor of Gary Poenisch on October 15, 2014, severed his claims against Templeton, and designated the judgment as final. Templeton filed a motion for new trial after the apparent deadline and filed its notice of appeal on January 16, 2015, without a motion for extension. The court ordered Templeton to provide a reasonable explanation for the untimely notice and warned that the appeal would be dismissed if it failed to respond.

## DISPOSITION

other

## CASES CITED

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

## OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas March 4, 2015 No. 04-15-00041-CV TEMPLETON MORTGAGE CORPORATION, Appellant v. Michael MIDDLETON, Appellee From the 216th Judicial District Court, Kendall County, Texas Trial Court No. 10-422-A Honorable N. Keith Williams, Judge Presiding ORDER The trial court signed a default judgment in favor of Gary Poenisch and against Appellant Templeton Mortgage Corporation on October 15, 2014.

In that same order, the trial court severed Poenisch's claims against Templeton Mortgage Corp. and stated that the default judgment was "intended to be a final entry of default resolving all issues raised in this cause by [Poenisch] against Templeton from which appeal may be filed." The original trial court cause number is 10- 422, and the severed cause was thus assigned 10-422A.

The clerk's record filed in this appeal includes only pleadings assigned 10-422A and does not include pleadings from the original cause number. In the companion appeal, Appeal No. 04-15-00040-CV, a full and complete clerk's record of trial court cause 10-422 was filed.

We therefore ORDER the Clerk of this Court to place a copy of the clerk's record from Appeal No. 04-15-00040-CV into this Appeal No. 04- 15-00041-CV. Because the trial court signed a final judgment in trial court cause number 10-422A on October 15, 2014, any motion for new trial was due to be filed by November 14, 2015.

The clerk's record reflects that Templeton Mortgage Corporation did not file a motion for new trial until November 18, 2014. Thus, it appears that Templeton Mortgage Corporation's motion for new trial was untimely filed. If the motion for new trial had been timely filed, the notice of appeal was due to be filed on January 13, 2015. A motion for extension of time to file the notice of appeal was due on January 28, 2015.

See TEX. R. APP. P. 26.3. The clerk's record reflects that Templeton Mortgage Corporation filed its notice of appeal on January 16, 2015. See TEX. R. APP. P. 26.1(a). No motion for extension of time to file the notice of appeal is contained within the clerk's record. 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.

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).

We, therefore, ORDER Appellant Templeton Mortgage Corporation to file, within fifteen days from the date of this order, a response presenting a reasonable explanation for failing to file the notice of appeal in a timely manner. If appellant fails to respond within the time provided, the

appeal will be dismissed. See TEX. R. APP. P. 42.3(c). \_\_\_\_\_  
Karen Angelini, Justice IN WITNESS WHEREOF, I have hereunto set my hand and affixed the  
seal of the said court on this 4th day of March, 2015. \_\_\_\_\_  
Keith E. Hottle Clerk of Court

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