

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

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