

FOURTH COURT OF APPEALS OF TEXAS, SAN ANTONIO

Alvin M. Burns, I.M. Burns, Dimmit County, Hakim Dermish, Robert L. Ramirez and Edward J. Dryden v. Rosetta Resources, Ltd., a/k/a Rosetta Resources, Inc., Eusebio Cantu Torres, Eusebio Torres, Jr., Gladiator Energy Services, LLC

No. 04-16-00593-CV · No. No. 04-16-00593-CV · Decided October 27, 2016

SUMMARY

The Fourth Court of Appeals of San Antonio orders certain appellants to explain their untimely notices of appeal. The court states that the notices were filed within the fifteen-day grace period but without motions for extension, and warns that failure to provide a reasonable explanation may result in dismissal.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas, San Antonio
WRITING FOR THE COURT	Rebeca C. Martinez
JURISDICTION	Texas
DECIDED	October 27, 2016
DOCKET	No. 04-16-00593-CV
DISPOSITION	other
PROCEDURAL POSTURE	The court addressed the timeliness of notices of appeal filed after entry of the trial court's final judgment and ordered certain appellants to explain their failure to file timely notices of appeal.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Alvin M. Burns, I.M. Burns, Dimmit County, Hakim Dermish, Robert L. Ramirez, Edward J. Dryden v. Rosetta Resources, Ltd., a/k/a Rosetta Resources, Inc., Eusebio Cantu Torres, Eusebio Torres, Jr., Gladiator Energy Services, LLC

TOPICS

appellate procedure

final judgment rule

civil procedure

PRACTICE AREAS

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether a notice of appeal filed within the fifteen-day grace period of Texas Rule of Appellate Procedure 26.3, but without a separately filed motion for extension, may be treated as accompanied by an implied motion for extension.
2. Whether appellants relying on an implied motion for extension must provide a reasonable explanation for their failure to timely file the notice of appeal.

HOLDINGS

1. When an appellant acting in good faith files a notice of appeal after the Rule 26.1 deadline but within the fifteen-day period provided by Rule 26.3, the notice necessarily implies a motion for extension of time.
2. An appellant relying on an implied motion for extension must offer a reasonable explanation for failing to file the notice of appeal timely.

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 Rule 26.1, but within the fifteen-day grace period provided by Rule 26.3 for filing a motion for extension of time.” (Order)

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

FACTUAL BACKGROUND

The trial court signed a final judgment on June 22, 2016, and a timely motion for new trial was filed on July 21, 2016. The resulting deadline for notices of appeal was September 20, 2016. Hakim Dermish filed his notice on September 23, while Robert L. Ramirez and Edward J. Dryden filed theirs on September 26; all were within the fifteen-day grace period but were accompanied by no motions for extension.

PROCEDURAL HISTORY

The 293rd Judicial District Court of Dimmit County signed a final judgment on June 22, 2016. After a timely motion for new trial, the deadline for filing notices of appeal was September 20, 2016. Hakim Dermish, Robert L. Ramirez, and Edward J. Dryden filed notices of appeal within the fifteen-day grace period under Texas Rule of Appellate Procedure 26.3, but did not file motions for extension. The court ordered them to present reasonable explanations within fifteen days and warned that failure to respond would result in dismissal.

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 October 27, 2016 No. 04-16-00593-CV Alvin M. BURNS, I.M. Burns, Dimmit County, Hakim Dermish, Robert L. Ramirez and Edward J. Dryden, Appellants v. ROSETTA RESOURCES, LTD., a/k/a Rosetta Resources, Inc., Eusebio Cantu Torres, Eusebio Torres, Jr., Gladiator Energy Services, LLC, Appellees From the 293rd Judicial District Court, Dimmit County, Texas Trial Court No. 12-07-11738-DCV Honorable David Peeples, Judge Presiding ORDER The trial court signed the final judgment on June 22, 2016.

A timely motion for new trial was filed on July 21, 2016. Therefore, notice of appeal was due to be filed on September 20, 2016. TEX. R. APP. P. 26.1(a)(1). A motion for extension of time to file the notice of appeal was due on October 5, 2016, fifteen days after the deadline for filing notice of appeal. TEX. R. APP. P. 26.3. Appellant Hakim Dermish, and appellants Robert L. Ramirez and Edward J. Dryden filed their notices of appeal on September 23, 2016 and September 26, 2016, respectively.

Both notices of appeal were filed late but within the fifteen-day grace period allowed by Rule 26.3. TEX. R. APP. P. 26.3(a). However, neither Hakim Dermish, nor Robert L. Ramirez and Edward J. Dryden filed a motion for extension of time to file a late notice of appeal. TEX. R. APP. P. 26.3(b). 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 (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). It is therefore ORDERED that appellant Hakim Dermish, and appellants Robert L. Ramirez and Edward J. Dryden file, within fifteen (15) days from the date of this order, a response presenting a reasonable explanation for their failure to file their notice of appeal in a timely manner.

If any appellant fails to respond within the time provided, their appeal will be dismissed. See TEX. R. APP. P. 42.3(c). _____ Rebeca C. Martinez, Justice
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 27th day of October, 2016. _____ Keith E. Hottle Clerk of Court

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