

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.

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