

Dismissed and Memorandum Opinion filed May 20, 2010.



In The

**Fourteenth Court of Appeals**

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NO. 14-10-00263-CV

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**MITCHELL M. CARTER D/B/A PRODEX CONCRETE FLOORING, Appellant**

**V.**

**WEIR ENTERPRISES, INC., Appellee**

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**On Appeal from the 333rd District Court  
Harris County, Texas  
Trial Court Cause No. 2008-34101**

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**MEMORANDUM OPINION**

This is an attempted appeal from a judgment signed November 18, 2009. Appellant filed a timely motion for new trial on December 17, 2009. Appellant's notice of appeal was filed March 18, 2010. When appellant has filed a timely motion for new trial, the notice of appeal must be filed within ninety days after the date the judgment is signed. *See* Tex. R. App. P. 26.1(a).

Appellant's notice of appeal was not filed timely. 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, 617-18 (1997) (construing the predecessor to Rule 26). Appellant's notice of appeal was not filed within the fifteen-day period provided by Rule 26.3

On April 28, 2010, notification was transmitted to all parties of the court's intention to dismiss the appeal for want of jurisdiction. *See Tex. R. App. P. 42.3(a)*. In its response, appellant failed to demonstrate that this court has jurisdiction to entertain the appeal.

Accordingly, the appeal is ordered dismissed.

PER CURIAM

Panel consists of Justices Anderson, Frost, and Seymore.