

NO. 07-12-0527-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL C
FEBRUARY 7, 2013

DARRIN OPAITZ, APPELLANT

V.

GANNAWAY WEB HOLDING, L.L.C. d/b/a WORLDNOW,
RAYCOM MEDIA, INC. d/b/a KCBD-TV NEWSCHANNEL 11,
and JAMES CLARK, APPELLEES

FROM THE 237TH DISTRICT COURT OF LUBBOCK COUNTY;
NO. 2011-556,884-A; HONORABLE LESLIE HATCH, JUDGE

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

**ORDER GRANTING MOTION FOR EXTENSION OF TIME
TO FILE NOTICE OF APPEAL**

Pending before this Court is Appellant's *Motion For Extension of Time To File Notice of Appeal and Appellant's Brief*. Having considered said motion, together with Appellees' *Reply to the Motion for Enlargement of the Time Allowed to Perfect an Appeal*, we are of the opinion that the motion should be granted.

BACKGROUND

By an order signed August 30, 2012, the trial court granted summary judgment in favor of Appellees, Gannaway Web Holdings, L.L.C., d/b/a Worldnow, Raycom Media, Inc., d/b/a KCBD-TV Newschannel 11, and James Clark, thereby disposing of claims being made against them by Appellant, Darrin Opaitz, for defamation. At the same time, the trial court severed those claims from the remaining claims being asserted against the defendants, Walker Broadcasting & Communications, Ltd., d/b/a NEWSRADIO 1920, and Denny Chad Rosson.

On September 27, 2012, Appellant filed a motion for new trial, thereby making the deadline for filing notice of appeal, November 28, 2012. See TEX. R. APP. P. 26.1(a). Although Appellant's motion for new trial was overruled by operation of law on November 13, 2012, TEX. R. CIV. P. 329b(c), the trial court scheduled for hearing and heard that motion on November 28, 2012. On December 3, 2012, the trial court entered an order denying Appellant's motion for new trial and on December 8, 2012, Appellant filed his notice of appeal in this proceeding.

By letter dated January 4, 2013, this Court notified Appellant of the late filing of his notice of appeal. On January 22, 2013, Appellant filed with this Court his *Motion for Extension of Time to File Notice of Appeal and Appellant's Brief* seeking an extension of the time to file both his notice of appeal and his brief. On January 31, 2013, Appellees filed their *Reply to the Motion for Enlargement of the Time Allowed to Perfect an Appeal* opposing the relief requested.

ANALYSIS

Although a motion for extension of time to file a notice of appeal is necessarily implied by the mere filing of the notice, *Verburgt v. Dorner*, 959 S.W.2d 615, 616-17 (Tex. 1997), it is still incumbent upon an appellant to “reasonably explain” why the appeal was not timely perfected. See *Kidd v. Paxton*, 1 S.W.3d 309, 310 (Tex.App.—Amarillo 1999, pet. denied); *Jones v. City of Houston*, 976 S.W.2d 676, 677 (Tex. 1998). See also TEX. R. APP. P. 10.5(b)(1)(C) (requiring for all motions to extend time, other than a motion to extend time for filing a notice of appeal, to recite, among other things, the facts relied on to reasonably explain the need for an extension). Appellant maintains that he was acting in good faith under the mistaken belief that his notice of appeal was timely due to circumstances surrounding his case, including the filing of a motion for abatement of the underlying trial court proceeding by the remaining defendants and the trial court’s scheduling of and hearing arguments on his motion for new trial on the very deadline date for filing notice of appeal.

We must not be quick to procedurally default litigants, as the standard for “reasonably explaining” the need for an extension is not terribly high. The question is whether there is “any plausible statement of circumstances indicating that failure to file within the [specified] period was not deliberate or intentional, but was the result of inadvertence, mistake, or mischance.” See *Meshwert v. Meshwert*, 549 S.W.2d 383, 384 (Tex. 1977). See also *Garcia v. Kastner Farms, Inc.*, 774 S.W.2d 668, 670 (Tex. 1989). Having considered Appellant’s explanation for the late filing of his notice of appeal in this case, we are convinced that the failure to timely perfect this appeal was

not intentional or deliberate and that the interest of justice dictates that we find he has reasonably explained his need for an extension.

The clerk's record in this case was filed on December 28, 2012, making Appellant's brief due on Monday, January 28, 2013. In the interest of justice, that due date is extended fourteen (14) days from the date of this order.

CONCLUSION

Accordingly, Appellant's notice of appeal is deemed timely filed and Appellant's brief is due within fourteen days of the date of this order.

Per Curiam