



**NUMBER 13-17-00231-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**CHRISTOPHER JAMES FRIEDE,**

**Appellant,**

**v.**

**RUTH ELLEN FRIEDE,**

**Appellee.**

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**On appeal from the 201st District Court  
of Travis County, Texas.**

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**MEMORANDUM OPINION**

**Before Justices Contreras, Benavides, and Longoria  
Memorandum Opinion by Justice Longoria**

Appellant Christopher James Friede attempted to perfect an appeal from a final decree of divorce rendered by the 201st District Court of Travis County in cause number D-1-FM-16-000634 on December 15, 2016.<sup>1</sup> On January 23, 2017, appellant filed a

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<sup>1</sup> This appeal was transferred to this Court from the Third Court of Appeals by order of the Texas Supreme Court. See TEX. GOV'T CODE ANN. § 22.220(a) (West, Westlaw through 2015 R.S.) (delineating the jurisdiction of appellate courts); TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through 2015 R.S.)

motion for new trial alleging, inter alia, that he did not receive notice of the judgment until he received a postcard concerning the judgment on January 17, 2017. Appellant filed his notice of appeal on April 13, 2017. On May 3, 2017, the Clerk of this Court notified appellant that it appeared that the notice of appeal had not been timely filed and requested correction of this defect, if it could be done, within ten days. Appellant did not file a response to this notice.

According to appellant's notice of appeal: the judgment appealed from was signed on December 16, 2016;<sup>2</sup> appellant did not sign the judgment and did not receive actual notice that the judgment was entered until January 17, 2017; appellant filed a motion for new trial on January 23, 2017; and the trial court held a hearing on appellant's motion for new trial on March 31, 2017 and denied the motion at that time. The clerk's record does not include an order denying appellant's motion for new trial or any order pertaining to appellant's notice of the judgment under Texas Rule of Civil Procedure 306a. See TEX. R. CIV. P. 306a.

Absent a timely filed notice of appeal from a final judgment or recognized interlocutory order, we do not have jurisdiction over an appeal. See *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). The notice of appeal must be filed within thirty days after the judgment or other appealable order is signed when appellant has not filed a timely motion for new trial, motion to modify the judgment, motion to reinstate, or

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(granting the supreme court the authority to transfer cases from one court of appeals to another at any time that there is "good cause" for the transfer).

<sup>2</sup> We note that the judgment appears to have been signed on December 15, 2016; however, the index to the clerk's record indicates that the judgment was signed on December 16, 2016. This discrepancy is immaterial to our analysis herein.

request for findings of fact and conclusions of law. See TEX. R. APP. P. 26.1. This period is extended to ninety days when, as here, appellant has filed a motion for new trial. See *id.* Appellant's notice of appeal was not filed within this ninety-day period of time. 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 *id.* R. 26.3; *Verburgt v. Dorner*, 959 S.W.2d 615, 617–18 (1997) (construing the predecessor to rule 26.1). Appellant's notice of appeal was not filed within the fifteen-day period provided by Rule 26.3.

Texas Rule of Civil Procedure 306a(3) requires a trial court clerk immediately to notify the parties or their attorneys, by first class mail, of the signing of an appealable order. See TEX. R. CIV. P. 306a(3). When more than twenty days have passed between the date that the trial court signs the order and the date that a party receives notice or acquires actual knowledge of the signing, the period for filing a notice of appeal may be extended to the earlier of the date the party received notice or acquired actual knowledge of the signing. TEX. R. APP. P. 4.2(a)(1); see *Pilot Travel Ctrs., LLC v. McCray*, 416 S.W.3d 168, 176 (Tex. App.—Dallas 2013, no pet.). To benefit from this extended time period, appellant must have proven, in the trial court on sworn motion and notice, the date on which he first received notice or acquired actual knowledge of the December 15, 2016 judgment and that the date was more than twenty days after the date the order was signed. See TEX. R. CIV. P. 306a(5); TEX. R. APP. P. 4.2(a)(1),(b). Further, the trial court must have signed a written order finding the date when appellant first received notice or

acquired actual knowledge that the judgment was signed. See TEX. R. APP. P. 4.2(c); *Moore Landrey, L.L.P. v. Hirsch & Westheimer, P.C.*, 126 S.W.3d 536, 540 (Tex. App.—Houston [1st Dist.] 2003, no pet.); see also *Cantu v. Longoria*, 878 S.W.2d 131, 132 (Tex. 1994).

The clerk's record filed in this Court does not include the trial court order and finding required by Texas Rule of Appellate Procedure 4.2(c). Without that order and finding, the time for filing a notice of appeal of the December 15, 2016 judgment was not extended. See *Nedd–Johnson v. Wells Fargo Bank, N.A.*, 338 S.W.3d 612, 613 (Tex. App.—Dallas 2010, no pet); see also *Johnson v. Linebarger Goggan Blair & Sampson, LLP*, No. 01-15-00950-CV, 2017 WL 1173886, at \*3 (Tex. App.—Houston [1st Dist.] Mar. 30, 2017, no pet. h.) (mem. op.). Because appellant did not follow the procedures required by Texas Rule of Civil Procedure 306a and Texas Rule of Appellate Procedure 4.2 to gain additional time to perfect his appeal, we lack jurisdiction over his attempted appeal. See *Mem'l Hosp. v. Gillis*, 741 S.W.2d 364, 365 (Tex. 1987) (per curiam).

The Court, having examined and fully considered the notice of appeal and the record before this Court, is of the opinion that we lack jurisdiction over this appeal. Accordingly, we DISMISS the appeal for WANT OF JURISDICTION. See TEX. R. APP. P. 42.3(a). All pending motions, if any, are likewise DISMISSED.

NORA L. LONGORIA  
Justice

Delivered and filed the  
25th day of May, 2017.