

NO. 12-09-00124-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

**ZHIZHEN “JENNIFER” RAO,
APPELLANT**

§ **APPEAL FROM THE 420TH**

V.

§ **JUDICIAL DISTRICT COURT OF**

**CHARLES WAYNE AIKIN,
APPELLEE**

§ **NACOGDOCHES COUNTY, TEXAS**

**MEMORANDUM OPINION
PER CURIAM**

This appeal is being dismissed pursuant to Texas Rule of Appellate Procedure 42.3(a). The trial court’s judgment was signed on December 30, 2008. Under rule of appellate procedure 26.1, unless Appellant Zhizhen “Jennifer” Rao timely filed a motion for new trial or other postjudgment motion that extended the appellate deadlines, her notice of appeal was due to have been filed “within 30 days after the judgment [was] signed,” i.e., January 29, 2009. Rao filed a motion for new trial. Therefore, her notice of appeal was due to have been filed “within 90 days after the judgment [was] signed,” i.e., March 30, 2009. *See* TEX. R. APP. P. 26.1(a). However, Rao did not file her notice of appeal until April 3, 2009.

On May 14, 2009, this court notified Rao pursuant to Texas Rules of Appellate Procedure 37.1 and 42.3(a) that her notice of appeal was untimely. Rao was also informed that because the notice of appeal was filed within fifteen days after it was due, a motion for extension of time to file the notice of appeal is implied. *See Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997); *see also* TEX. R. APP. P. 26.3. But Rao was warned that if she did not, on or before May 26, 2009, provide the court a reasonable explanation for the late filing of the notice, the appeal would be dismissed. Through her attorney of record, Rao responded with a letter requesting “the stopping of the appeal.” Accordingly, the appeal is *dismissed*. *See* TEX. R. APP. P. 42.3(a).

Opinion delivered June 10, 2009.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)