

Opinion filed July 19, 2018



In The
Eleventh Court of Appeals

No. 11-18-00106-CV

DAVID GRACIA, Appellant

V.

MARK LAYNE COCKERHAM, Appellee

**On Appeal from the 385th District Court
Midland County, Texas
Trial Court Cause No. CV53083**

MEMORANDUM OPINION

On April 26, 2018, this court abated this appeal to permit Appellant, David Gracia,¹ to obtain a ruling from the trial court regarding Appellant's assertion that, because he did not receive notice of the trial court's final judgment until March 22, 2018, his notice of appeal was timely. *See* TEX. R. CIV. P. 306a. The trial court held a hearing and determined that Appellant acquired actual knowledge of the final

¹We note that Appellant's last name is spelled both "Gracia" and "Garcia" on the documents filed in this appeal. However, the notice of appeal indicates that Appellant's last name is "Gracia."

judgment on January 8, 2018—the date that the trial court signed the judgment. Accordingly, the notice of appeal, which was filed on April 17, 2018, was not timely. It was, however, filed within the fifteen-day extension period permitted by the rules. *See* TEX. R. APP. P. 26.3; *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997) (holding that a motion for extension of time is necessarily implied when an appellant, in good faith, files an appeal during the fifteen-day window). Pursuant to *Verburgt*, Appellant must still provide this court with a reasonable explanation for his failure to timely file his notice of appeal. *See* TEX. R. APP. P. 10.5(b). Appellant has not done so.

By letter dated June 25, 2018, this court directed Appellant to respond and show grounds to continue this appeal. In that letter, this court also directed Appellant to remit the \$205 filing fee, which was originally due on May 24. The deadline set by this court for the filing of Appellant’s response and the payment of the filing fee was July 5, 2018. In the June 25 letter, the clerk of this court informed Appellant this appeal may be dismissed absent a response or the payment of the filing fee in a timely manner. *See* TEX. R. APP. P. 5, 42.3(c). As of this date, Appellant has not filed a response or remitted the filing fee as required.

Because Appellant has failed to pay the required filing fee in this appeal and has failed to comply with this court’s directives, we dismiss this appeal.

PER CURIAM

July 19, 2018

Panel consists of: Willson, J.,
Bailey, J., and Wright, S.C.J.²

²Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas, sitting by assignment.