

Dismissed and Opinion Filed October 23, 2015



In The  
**Court of Appeals**  
**Fifth District of Texas at Dallas**

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No. 05-15-01149-CV

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**NOEL RUBIO, Appellant**

**V.**

**TEXAS WORKFORCE COMMISSION AND DALLAS ISD, Appellees**

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**On Appeal from the County Court at Law No. 3**  
**Dallas County, Texas**  
**Trial Court Cause No. CC-15-00027-C**

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**MEMORANDUM OPINION**

Before Chief Justice Wright, Justice Lang-Miers, and Justice Stoddart  
Opinion by Chief Justice Wright

Before the Court is appellant's October 13, 2015 motion to extend time to file his notice of appeal. Because we conclude appellant did not provide a reasonable explanation for the need for an extension, we deny appellant's motion and dismiss the appeal for lack of jurisdiction.

Appellant seeks to appeal an order signed August 17, 2015 dismissing for want of jurisdiction his de novo appeal of a justice court judgment. Appellant did not file a motion or pleading extending the appellate timetable. Thus, appellant's notice of appeal from the county court's judgment was due on or before September 16, 2015. The certificate of service on appellant's notice of appeal states that the notice of appeal was mailed August 21, 2015, but both the notice of appeal filed in the trial court and the copy filed in this Court are file stamped

September 21, 2015.<sup>1</sup> For that reason the notice of appeal is not timely under rule 5 of the Texas Rules of Civil Procedure, the “mailbox rule,” because the enlargement of time granted by rule 5 applies only to pleadings received within ten days of the mailing date. TEX. R. CIV. P. 5.

An extension of time to file a notice of appeal may be granted if an appellant files a notice of appeal within fifteen days after the deadline for timely filing a notice of appeal and files a motion complying with rule of appellate procedure 10.5(b). See TEX. R. APP. P. 26.3. Appellant’s notice of appeal was filed within this fifteen day grace period. Accordingly, by letter dated October 5, 2015, the Court directed appellant to file a motion for extension of time to file his notice of appeal that complied with rule 10.5(b). Appellant filed a motion for extension of time, but the motion did not comply with rule 10.5(b).

Appellant’s motion requested additional time to file the notice of appeal because, “I show documents that I had my certificate and I renew my certificate every 5 Years. And the question was about my certificate. And the letter of notice of dismissal I do not receive this days.” He further stated:

I totally disagree with decision on my case # CC-15-00027 on August 17,2015. This case only a question of law, which was answered by my correctly. I worked the school year 2012-2013 and the question was give me a certificate of August 15, 2013 and I give my certificate 2018 and it cover the years 2012-2013-2014-2015-2016-2017-and 2018. Note / By law no one can work as a teacher, if do not had a certificate. I renew my certificate every 5 years.

Appellant’s explanation goes to the merits of his underlying claim and does not address the facts that reasonably explain his need for an extension. Rule 10.5(b)(2) requires that a motion for extension of time to file a notice of appeal must set forth the facts relied on to reasonably explain the need for an extension. TEX. R. APP. P. 10.5(b)(2)(A). The Texas Supreme Court has defined “reasonable explanation” to mean any plausible statement of circumstance indicating that failure

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<sup>1</sup> Moreover appellant’s motion to extend time to file notice of appeal does not include evidence of the date of mailing. TEX. R. CIV. P. 5 (document must be sent by first-class mail in properly addressed and stamped envelope; legible postmark affixed by United States Postal Service shall be prima facie evidence of date of mailing).

to file the notice of appeal within the required period was not deliberate or intentional, but was the result of inadvertence, mistake, or mischance. *Garcia v. Kastner Farms, Inc.*, 774 S.W.3d 668, 669 (Tex. 1989). Appellant's motion does not satisfy this requirement. We deny appellant's motion to extend time to file his notice of appeal.

Without a timely filed notice of appeal, this Court lacks jurisdiction. TEX. R. APP. P. 25.1(b). Accordingly, we dismiss this appeal for lack of jurisdiction.

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/Carolyn Wright/  
CAROLYN WRIGHT  
CHIEF JUSTICE



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

NOEL RUBIO, Appellant

No. 05-15-01149-CV      V.

TEXAS WORKFORCE COMMISSION  
AND DALLAS ISD, Appellees

On Appeal from the County Court at Law  
No. 3, Dallas County, Texas  
Trial Court Cause No. CC-15-00027-C.  
Opinion delivered by Chief Justice Wright.  
Justices Lang-Miers and Stoddart  
participating.

In accordance with this Court's opinion of this date, the appeal is **DISMISSED** for want of jurisdiction.

It is **ORDERED** that appellees TEXAS WORKFORCE COMMISSION AND DALLAS ISD recover their costs of this appeal from appellant NOEL RUBIO.

Judgment entered this 23rd day of October, 2015.