

Dismissed and Opinion Filed May 16, 2018



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

No. 05-18-00447-CV

**VICKI BATES, Appellant
V.
MONARCH DENTAL SERVICES, Appellee**

**On Appeal from the 162nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-17-05067**

MEMORANDUM OPINION

Before Chief Justice Wright, Justice Evans, and Justice Brown
Opinion by Chief Justice Wright

Before the Court is Vicki Bates's motion for an extension of time to file her notice of appeal. Bates seeks to appeal the trial court's January 3, 2018 summary judgment.

Bates timely filed in the trial court a motion to vacate the summary judgment, making her notice of appeal due April 3, 2018 or with an extension motion reasonably explaining the need for additional time, April 18, 2018. *See* TEX. R. APP. P. 10.5(b)(1)(C), 26.1(a), 26.3. Bates filed her notice of appeal April 17, 2018 and explains in her motion she did not file the notice earlier because a hearing on her motion to vacate was scheduled April 16, 2018 and the "appeal would have been mooted had the [trial court] vacated the summary judgment as requested."

A "reasonable explanation" 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." *Hone v. Hanafin*, 104 S.W.3d 884, 886 (Tex. 2003) (per curiam) (quoting *Meshwert v. Meshwert*, 549 S.W.2d 383, 384 (Tex. 1977)). Bates's explanation, however, reflects Bates was aware of the deadline for filing her notice of appeal but intentionally disregarded it. *See Gibbs v. Allsup Enter., Inc.*, 153 S.W.3d 603, 604 (Tex. App.—Amarillo 2004, pet. denied) (per curiam) (waiting on order denying motion for new trial to determine whether to appeal not reasonable explanation). Because an explanation that shows a conscious or strategic decision to wait to file the notice of appeal is not reasonable, we deny the extension motion and dismiss the appeal for want of jurisdiction. *See Tex. R. App. P. 42.3(a); Gibbs*, 153 S.W.3d at 604.

/Carolyn Wright/

CAROLYN WRIGHT
CHIEF JUSTICE

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

JUDGMENT

VICKI BATES, Appellant

No. 05-18-00447-CV V.

MONARCH DENTAL SERVICES,
Appellee

On Appeal from the 162nd Judicial District
Court, Dallas County, Texas

Trial Court Cause No. DC-17-05067.

Opinion delivered by Chief Justice Wright,
Justices Evans and Brown participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal.

We **ORDER** that appellee Monarch Dental Services recover its costs, if any, of this appeal from appellant Vicki Bates.

Judgment entered May 16, 2018.