

Opinion issued August 28, 2008.



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-08-00488-CV

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**FELICIA WILLIAMSON, INDIVIDUALLY AND AS REPRESENTATIVE OF  
THE ESTATE OF ROBERT BONNEY AND KENNETH DILLINGHAM,  
Appellant**

**V.**

**SHENANDOAH APARTMENTS AND WINDSWEPT PORTFOLIO LLC., ET  
AL., Appellees**

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**On Appeal from the 61<sup>st</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 2006-01556**

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**MEMORANDUM OPINION**

We lack jurisdiction to hear this appeal. Appellant's notice of appeal in this

case was due on May 22, 2008. Appellant filed her notice of appeal on June 9, 2008. Even taking into account the extra time allowed by Rule 26.3 of the Texas Rules of Appellate Procedure, Appellant's notice of appeal is untimely. *See* TEX. R. APP. P. 26.3.

Appellee has filed a motion to dismiss this appeal for want of jurisdiction. Appellant's response to that motion argues that the period for calculating the deadline for her notice of appeal ran from the date that the trial court denied her motion for new trial, or alternatively, that Appellant's counsel believed that to be the case. Appellant's argument is directly contradicted by both the Rules of Appellate Procedure and case law. Under Rule 26.1(a)(1), if a motion for new trial is timely filed, the notice of appeal must be filed within 90 days after the judgment is signed. *See* TEX. R. APP. P. 26.1(a)(1)). Rule 26.3 allows additional time to file a notice of appeal, so long as the notice is filed within 15 days after the deadlines set forth in Rule 26.1. TEX. R. APP. P. 26.3 (allowing for an extension of time); *see also 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 acting in good faith files a late notice of appeal within the 15-day period of Rule 26.1). However, Appellant's notice of appeal was outside the 15-day window allowed by Rule 26.3, and the trial court's denial of her motion for new trial did not extend the appellate timetable beyond the

90 days set forth in Rule 26.1. *See Garza v. Hibernia Nat. Bank*, 227 S.W.3d 233, n.1 and n.2 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2007, no pet.)(the denial of a motion for new trial does not extend the appellate deadlines, and where a notice of appeal is filed more than 15 days after the date it was due, *Verburgt* does not apply).

Because the notice of appeal in this case was not filed within the time allowed by the Texas Rules of Appellate Procedure, we dismiss this appeal for lack of jurisdiction.

Any pending motions are denied as moot.

**PER CURIAM**

Panel consists of Justices Nuchia, Alcalá, and Hanks.