

Opinion issued December 1, 2011.



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

---

NO. 01-11-00437-CV

---

**KRISTOFER THOMAS KASTNER, Appellant**

**V.**

**STEPHEN MORRIS, ATTORNEY AT LAW, INDIVIDUALLY AND AS  
PROPRIETOR OF THE LAW OFFICES OF STEPHEN MORRIS, Appellee**

---

**On Appeal from the 61st District Court  
Harris County, Texas  
Trial Court Cause No. 2010-61944**

---

**MEMORANDUM OPINION**

Appellant, Kristofer Thomas Kastner, attempts to appeal from the trial court's judgment signed January 31, 2011. Because appellant's notice of appeal was untimely filed, we dismiss.

Generally, a notice of appeal is due within thirty days after the judgment is signed. *See* TEX. R. APP. P. 26.1(a). The deadline to file a notice of appeal is extended to 90 days after the date the judgment is signed if any party timely files a motion for new trial, motion to modify the judgment, motion to reinstate, or, under certain circumstances, a request for findings of fact and conclusions of law. *Id.* We may extend the time to file the notice of appeal if, within 15 days after the deadline to file the notice of appeal, the party properly files a motion for extension. *See* TEX. R. APP. P. 10.5(b), 26.3. A motion for extension of time is necessarily implied when an appellant, acting in good faith, files a notice of appeal beyond the time allowed by rule 26.1, but within the 15-day extension period provided by Rule 26.3. *See* TEX. R. APP. P. 26.1, 26.3; *Verburgt v. Dorner*, 959 S.W.2d 615, 617–18 (Tex. 1997).

The record reflects that appellant timely filed a motion to vacate the trial court's judgment, which extended the deadline for appellant to file his notice of appeal to 90 days after the date the judgment was signed, or Monday, May 2, 2011. *See* TEX. R. APP. P. 26.1(a). Appellant's notice of appeal was not filed until

Wednesday, May 18, 2011. Appellant did not file a motion to extend time to file his notice of appeal and did not file his notice of appeal within the *Verburgt* period. *See* TEX. R. APP. P. 26.3; *Verburgt*, 959 S.W.2d at 617–18.

Appellant’s notice of appeal was untimely filed. Without a timely filed notice of appeal, this Court lacks jurisdiction over the appeal. *See* TEX. R. APP. P. 25.1.

On August 26, 2011, we notified appellant that his appeal was subject to dismissal for want of jurisdiction unless, by September 15, 2011, he filed a response showing that this Court has jurisdiction of the appeal. No response was filed by that date. Appellant later filed a new notice of appeal, but it does not show that this Court has jurisdiction of the appeal.

Accordingly, we dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a), 43.2(f). We dismiss any pending motions as moot.

**PER CURIAM**

Panel consists of Chief Justice Radack and Justices Bland and Huddle.