

Opinion issued September 3, 2015



In The  
Court of Appeals  
For The  
First District of Texas

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NO. 01-15-00641-CV

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**AGBOLADE ODUTAYO AND BONITA ODUTAYO, Appellants**

**V.**

**STEVE WU, INDIVIDUALLY AND AS SPECIAL TRUSTEE FOR WU  
FAMILY TRUST, Appellee**

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**On Appeal from the 133rd Judicial District Court  
Harris County, Texas  
Trial Court Cause No. 2013-30215**

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**MEMORANDUM OPINION**

Appellants, Agbolade Odutayo and Bonita Odutayo attempt to appeal from the trial court's judgment signed April 13, 2015.

Generally, a notice of appeal is due within thirty days after the judgment is signed. *See* TEX. R. APP. P. 26.1. 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. *See* TEX. R. APP. P. 26.1(a). To be considered timely, a motion for new trial must be filed within 30 days after the judgment is signed. TEX. R. CIV. P. 329b(a).

The record reflects that the trial court signed the final judgment on April 13, 2015. The record further shows that appellants filed a motion for new trial on May 12, 2015. *See id.*

Because their motion for new trial was timely filed, appellants' notice of appeal was due by July 13, 2015. Appellants did not file a notice of appeal until July 24, 2015—11 days after the deadline, but within the 15-day extension period provided by Rule 26.3. *See* TEX. R. APP. P. 26.1, 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. *See* TEX. R. APP. P. 26.1, 26.3; *Verburgt v. Dorner*, 959 S.W.2d 615, 617–18 (Tex. 1997). The appellant must, however, offer a reasonable explanation for

failing to file the notice of appeal in a timely manner. *See* TEX. R. APP. P. 10.5(b)(1)(C), 26.3; *Jones v. City of Houston*, 976 S.W.2d 676, 677 (Tex. 1998).

On July 24, 2015, appellants filed a motion for extension of time to file their notice of appeal but provided no explanation for why the notice of appeal was untimely filed. On August 4, 2015, appellee filed a motion to dismiss arguing that appellants did not comply with rule 10.5 because they failed to offer a reasonable explanation for the delay. We agree. Because appellant's notice of appeal was filed 11 days after the deadline and appellants have offered no explanation for the delay, the notice of appeal was not timely. Without a timely filed notice of appeal, this Court lacks jurisdiction over the appeal. *See* TEX. R. APP. P. 25.1.

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

**PER CURIAM**

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