

Motion Granted; Appeal Dismissed and Memorandum Opinion filed November 18, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-00810-CV

IN THE INTEREST OF B.A.M.

On Appeal from the 247th District Court
Harris County, Texas
Trial Court Cause No. 2009-70010

MEMORANDUM OPINION

This is an attempted appeal from a judgment signed on April 29, 2010.

The notice of appeal must be filed within thirty days after the judgment is signed when appellant has not filed a timely motion for new trial, motion to modify the judgment, motion to reinstate, or request for findings of fact and conclusion of law. *See* Tex. R. App. P. 26.1. Appellant filed a timely motion for new trial on May 28, 2010. When appellant has filed a timely motion for new trial, the notice of appeal must be filed within ninety days after the date on which the judgment is signed. *See* Tex. R. App. P. 26.1(a). Appellant's notice of appeal was therefore due on or before July 28, 2010. Appellant's notice of appeal

was filed on August 16, 2010. Therefore, appellant's notice of appeal was not filed timely.

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 fifteen-day grace period provided by Rule 26.3 for filing a motion for extension of time. *See Verburgt v. Dorner*, 959 S.W.2d 615, 617-18 (1997) (construing the predecessor to Rule 26). Appellant's notice of appeal was not filed within the fifteen-day period provided by rule 26.3.

On September 8, 2010, appellee filed a motion to dismiss this appeal because the notice of appeal was untimely filed. Appellant filed a response. Appellant's response fails to demonstrate that this Court has jurisdiction to entertain the appeal.

Accordingly, appellee's motion is granted and the appeal is ordered dismissed.

PER CURIAM

Panel consists of Justices Seymore, Boyce, and Christopher.