

Motion Granted; Appeal Dismissed and Memorandum Opinion filed May 3, 2016.



In The

Fourteenth Court of Appeals

NO. 14-16-00234-CV

FLANDIS COLLINS, Appellant

V.

LINDA VISTA APARTMENT HOMES, Appellee

**On Appeal from the 165th District Court
Harris County, Texas
Trial Court Cause No. 2014-51536**

M E M O R A N D U M O P I N I O N

This is an attempted appeal from a judgment signed November 4, 2015. Appellant filed a timely motion for new trial on October 28, 2015.¹ Appellant's

¹ Appellant filed the motion for new trial after the trial court signed a partial summary judgment on October 21, 2015. A prematurely filed motion for new trial shall be deemed to have been filed on the date of but subsequent to the time of signing of the judgment the motion assails. Tex. R. Civ. P. 306c.

notice of appeal was due February 2, 2016, but was not filed until March 18, 2016. *See* Tex. R. App. P. 26.1(a).

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 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 15-day period provided by Rule 26.3.

On April 5, 2016, appellee filed a motion to dismiss the appeal on the ground that the notice of appeal was not filed timely. On April 20, 2016, appellant filed a response to appellee’s motion in which he argues that the notice of appeal was filed within 90 days of the trial court’s final judgment dated January 4, 2016. The record in this appeal does not reflect a final judgment signed January 4, 2016. 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 Busby, Donovan, and Wise.