

Motion Denied; Appeal Dismissed and Memorandum Opinion filed August 9, 2016.



In The

Fourteenth Court of Appeals

NO. 14-16-00359-CV

DIOGU KALU DIOGU II, Appellant

V.

FORT BEND COUNTY, ET AL, Appellee

**On Appeal from the 400th District Court
Fort Bend County, Texas
Trial Court Cause No. 04-DCV-134011**

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 by November 12, 2015. Appellant filed a timely motion for new trial. The notice of appeal must be filed within 90 days after the judgment is signed when appellant has filed a timely post-judgment motion. Tex. R. App. P. 26.1(a). Therefore, appellant's notice of appeal was due February 10, 2016. The notice of appeal was not filed until May 2, 2016.

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(a), 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 June 22, 2016, notification was transmitted to all parties of the court’s intention to dismiss the appeal for want of jurisdiction. *See* Tex. R. App. P. 42.3(a). In response, appellant filed a document entitled, “Motion to Retain This Case on the Docket in Order Set Aside the Lower Court’s Judgment as Void and Dismiss Appeal on the Merit for Lack of Jurisdiction.” The motion fails to demonstrate that this court has jurisdiction over this appeal.

Accordingly, appellant’s motion is **DENIED** and the appeal is **DISMISSED**.

PER CURIAM

Panel consists of Justices Jamison, McCally, and Wise.