

Motion Denied; Appeal Dismissed and Memorandum Opinion filed October 27, 2016



In The

Fourteenth Court of Appeals

NO. 14-16-00725-CV

SHARON ANN ZENNER AND STUART ANDREW ZENNER, Appellants

V.

**MARY DIMATARIS, INDEPENDENT EXECUTRIX OF THE ESTATE OF
MARVIN HENRY KLUTTZ, DECEASED, Appellee**

**On Appeal from Probate Court No. 3
Harris County, Texas
Trial Court Cause No. 436,017**

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

This is an attempted appeal from an order signed June 28, 2016. Appellants did not file a motion for new trial. The notice of appeal was filed August 22, 2016.

The notice of appeal must be filed within 30 days after the judgment is signed when appellant has not filed a timely post-judgment motion. Tex. R. App. P. 26.1.

Appellants' 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 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 September 27, 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). On October 11, 2016, appellants filed a motion to consolidate this appeal with the original proceeding on their petition for mandamus, *In re Zenner*, No. 14-16-00531-CV. The petition was denied on July 26, 2016, and their motion for rehearing was denied on September 1, 2016.

The motion to consolidate fails to demonstrate that we have jurisdiction. No other response to the dismissal notice was filed.

Accordingly, the motion to consolidate is **DENIED** and the appeal is **DISMISSED**.

PER CURIAM

Panel consists of Justices Busby, Donovan, and Brown.