

**Dismissed for Lack of Jurisdiction and Memorandum Opinion filed June 6, 2017.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-16-00334-CV**

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**IN THE INTEREST OF C.D.P., A MINOR CHILD**

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**On Appeal from the 245th District Court  
Harris County, Texas  
Trial Court Cause No. 2008-19287**

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**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 January 19, 2016. Appellant Joshua Perkins filed a notice of appeal on April 19, 2016. The notice of appeal states that this is a restricted appeal. *See* Tex. R. App. P. 30. Texas Rule of Appellate Procedure 30, entitled “Restricted Appeal to Court of Appeals in Civil Cases,” provides:

A party who did not participate – either in person or through counsel – in the hearing that resulted in the judgment complained of and who did not timely file a postjudgment motion or request for findings of fact and conclusions of law, or a notice of appeal within the time

permitted by Rule 26.1(a), may file a notice of appeal within the time permitted by Rule 26.1(c).”

Tex. R. App. P. 30. Appellant filed a timely motion for new trial on February 4, 2016. Thus, a restricted appeal was unavailable to him. *See* Tex. R. App. P. 30; *Muirhead v. Muirhead*, No. 01-16-00950-CV, 2017 WL 976078, at \*1 (Tex. App.—Houston [1st Dist.] 2017, Mar. 14, 2017, no pet. h.).

Even if we were to construe appellant’s notice of appeal as a notice of regular appeal, appellant’s notice of appeal would not be timely. The notice of appeal must be filed within 90 days after the judgment is signed if a party files a motion for new trial. Tex. R. App. P. 26(a)(1). Because the notice of appeal was filed within 15 days of the due date, a motion for extension of time is implied. *See Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997). Even when an extension of time is implied, appellant still is obligated to come forward with a reasonable explanation to support the late filing. *See Miller v. Greenpark Surgery Ctr. Assocs., Ltd.*, 974 S.W.2d 805, 808 (Tex. App.—Houston [14th Dist.] 1998, no pet.). He did not do so.

On May 15, 2017, this court ordered appellant to file, on or before May 25, 2017, a proper motion to extend time to file the notice of appeal or the appeal would be dismissed. No proper motion to extend time to file has been filed. Accordingly, we order the appeal dismissed for lack of jurisdiction. *See* Tex. R. App. P. 42.3(a); *Taborda v. Tamirisa*, No. 14-16-00545-CV, 2016 WL 6465582, at \*1 (Tex. App.—Houston [14th Dist.] Nov. 1, 2016, no pet.) (mem. op.).

/s/      Kem Thompson Frost  
            Chief Justice

Panel consists of Chief Justice Frost and Justices Donovan and Wise.