

Dismissed and Memorandum Opinion filed February 14, 2017.



In The

Fourteenth Court of Appeals

NO. 14-16-00935-CV

THOMAS RAY SIDES, Appellant

V.

WILLIAM STEPHENS, Appellee

**On Appeal from the 412th District Court
Brazoria County, Texas
Trial Court Cause No. 81364-I**

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 December 15, 2015. Any motion for new trial or other motion to modify the judgment was due to be filed on or before January 14, 2016. Tex. R. Civ. P. 329b(a), (g). On January 9, 2016, a date within 30 days of the judgment, appellant mailed a document qualifying as a motion for new trial to the district clerk. The clerk received the motion within 10 days of the due date for any post-judgment motion. Accordingly, the motion for new trial is deemed to have been filed on January 9, 2016. *See* Tex.

R. Civ. P. 5. The motion for new trial was therefore timely. When appellant has filed a timely post-judgment motion, the notice of appeal must be filed within 90 days after the date the judgment is signed. *See* Tex. R. App. P. 26.1(a). Accordingly, appellant's notice of appeal was due March 14, 2016. *Id.*

Appellant's notice of appeal was not filed until November 7, 2016, the day he placed it in the mail for filing by the district clerk, and therefore 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 December 28, 2016, this court transmitted notification to all parties of the court's intention to dismiss the appeal for want of jurisdiction. *See* Tex. R. App. P. 42.3(a). Appellant has responded but his response fails to demonstrate that this court has jurisdiction to entertain the appeal.

Accordingly, the appeal is ordered dismissed.

PER CURIAM

Panel consists of Justices Christopher, Busby, and Jewell.