

Motion Denied, Appeal Dismissed and Memorandum Opinion filed June 20, 2017.



In The

Fourteenth Court of Appeals

NO. 14-17-00236-CV

DENISE G. JAMES, Appellant

V.

DISCOVERY SHADOW CREEK OWNER, LP, Appellee

**On Appeal from County Court at Law No. 1 & Probate Court
Brazoria County, Texas
Trial Court Cause No. CI54869**

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 October 26, 2016. A motion for new trial was due 30 days after the judgment was signed. Tex. R. Civ. P. 329b(a). The thirtieth day after the judgment was signed was Friday, November 25, 2016, which was the day after Thanksgiving and a legal holiday. As a result, the deadline for filing a motion for new trial was extended to the next day that was not a Saturday, Sunday, or legal holiday. Tex. R. Civ. P. 4. That day was Monday,

November 28, 2016. Appellant filed a motion for new trial that day. Therefore, her motion for new trial was filed timely.

The notice of appeal must be filed within 90 days after the judgment is signed when appellant has filed a timely post-judgment motion. See Tex. R. App. P. 26.1(a). The ninetieth day after the judgment was signed January 24, 2017. However, appellant did not file her notice of appeal until March 14, 2017.

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.

A court of appeals lacks jurisdiction to hear an appeal that was not timely perfected. When the court lacks jurisdiction, it must dismiss the appeal. See *Baker v. Baker*, 469 S.W.3d 269, 272 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

On May 23, 2017, notification was transmitted to all parties of the court’s intention to dismiss the appeal for lack of jurisdiction. See Tex. R. App. P. 42.3(a). In response, appellant filed a motion for extension until August 30, 2017, to retain an attorney to “file the legal documents for ‘JURISDICTION OF APPEAL or TIMELY NOTICE OF APPEAL.’” Given the undisputed facts, we deny the motion.

Accordingly, appellant’s motion for extension is denied and the appeal is dismissed.

PER CURIAM

Panel consists of Justices Christopher, Brown, and Wise.