

Appeal Dismissed and Memorandum Opinion filed September 2, 2021.



In The

Fourteenth Court of Appeals

NO. 14-20-00807-CV

CUYLER SMITH, Appellant

V.

CRISTINA SMITH, Appellee

**On Appeal from the 280th District Court
Harris County, Texas
Trial Court Cause No. 2020-48293**

MEMORANDUM OPINION

This is an attempted appeal from a protective order signed October 5, 2020. Tex. Fam. Code Ann. § 81.009(a). No post-judgment motion was filed. Appellant's notice of appeal was filed November 25, 2020.

The notice of appeal must be filed within 30 days after the judgment or appealable order is signed when appellant has not filed a timely post-judgment motion. *See* Tex. R. App. P. 26.1 Appellant's notice of appeal was not filed timely. A motion to extend time is necessarily implied when an appellant, acting in good

faith, files a notice of appeal beyond the time allowed by Texas Rule of Appellate Procedure 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 Texas Rule of Appellate Procedure 26.3.

Appellant’s notice of appeal was executed on October 31, 2020. The notice of appeal was not filed until November 25, 2021. Rule 9 of the Texas Rules of Appellate Procedure states the requirements pertaining to filing of documents by mail, including the defendant's notice of appeal. Tex. R. App. P. 9.; *see also Taylor v. State*, 424 S.W.3d 39, 45-46 (Tex. Crim. App. 2014). Rule 9 provides a document is considered timely filed when it was deposited in the mail on or before the last day for filing. Tex. R. App. P. 9.2(b)(1)(c). When a defendant in custody files a pro se notice of appeal by mailing it on or before the due date, the notice of appeal does not have to be received by the clerk within 10 days of the date when it was due per Rule 9.2(b)(1). *See Ramos v. Richardson*, 228 S.W.3d 671, 673 (Tex. 2007); *Warner v. Glass*, 135 S.W.3d 681, 684–85 (Tex. 2004). Under this adaption of Rule 9.2(b)(1), known as the “prisoner mailbox rule,” a pro se notice of appeal from a defendant in custody is deemed timely filed so long as it was delivered to prison officials for mailing on or before its due date, and otherwise complies with Rule 9.2(b). Tex. R. App. P. 9.2(b); *Ramos*, 228 S.W.3d at 673. The record before this court does not indicate appellant delivered his notice of appeal to prison officials for mailing on or before the due date of November 19, 2020.

On June 2, 2021, 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)*. Appellant filed no response.

We dismiss the appeal.

PER CURIAM

Panel consists of Justices Jewell, Spain, and Wilson.