

**Motion to Dismiss Granted, Appeal Dismissed and Memorandum Opinion
filed October 5, 2023.**



**In The
Fourteenth Court of Appeals**

NO. 14-23-00246-CV

KELLY CLARK LEWIS, Appellant

V.

**WARREN KENNETH PAXTON, JR, SUED IN HIS OFFICIAL PUBLIC
CAPACITY AS THE ATTORNEY GENERAL OF TEXAS, Appellee**

**On Appeal from the 126th District Court
Travis County, Texas
Trial Court Cause No. D-1-GN-22-003202**

MEMORANDUM OPINION

This is an attempted appeal from a judgment signed December 20, 2022. Appellant, filed her notice of appeal on March 15, 2023, 85 days after the judgment was signed. Before the court is appellee's motion to dismiss, seeking dismissal of the appeal for lack of jurisdiction based on when appellant filed her

notice of appeal. Appellant has filed a response to the motion.

Normally, an appellant must file a notice of appeal within 30 days after the underlying judgment is signed. Tex. R. App. P. 26.1(a). However, an appellant has 90 days after the judgment is signed to file a notice of appeal when they have timely filed one of several post-judgment motions. *Id.* 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).

Appellant's notice of appeal was not filed timely. The record does not indicate appellant timely filed a post-judgment motion that would extend the time for filing a notice of appeal. However, 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 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 (Tex. 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.

Accordingly, as we conclude appellant did not timely perfect her appeal, we hereby grant the motion and dismiss the appeal.

PER CURIAM

Panel consists of Chief Justice Christopher and Justices Bourliot and Hassan.