

*Court of Appeals*  
*Fourth Court of Appeals District of Texas*  
*San Antonio*



**MEMORANDUM OPINION**

No. 04-12-00285-CV

In the Interest of **C.A.N.** and **R.A.N.**, III, Children

From the 37th Judicial District Court, Bexar County, Texas

Trial Court No. 1986-CI-22039

Honorable David A. Berchelmann, Jr., Judge Presiding

PER CURIAM

Sitting: Karen Angelini, Justice  
Santee Bryan Marion, Justice  
Phylis J. Speedlin, Justice

Delivered and Filed: August 29, 2012

DISMISSED

Appellant Jessica Scott attempts to appeal from a final judgment signed on January 24, 2012. For the following reasons, we dismiss this appeal.

The Texas Rules of Appellate Procedure provide that a notice of appeal must be filed within ninety days after the judgment is signed if any party timely files a motion for new trial. TEX. R. APP. P. 26.1(a)(1). The time to file a notice of appeal is extended if, within fifteen days after the deadline for filing the notice of appeal, an appellant files a notice of appeal and a motion for extension of time to file a notice of appeal. TEX. R. APP. P. 26.3. 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

fifteen-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 (Tex. 1997) (construing the predecessor to Rule 26). However, the appellant must offer a reasonable explanation for failing to file the notice of appeal in a timely manner. *See id.*; TEX. R. APP. P. 26.3, 10.5(b)(2)(A).

Here, the trial court signed a final judgment on January 24, 2012. Appellant timely filed a motion for new trial on February 22, 2012. Therefore, the notice of appeal was due to be filed on April 23, 2012. *See* TEX. R. APP. P. 26.1(a)(1). Appellant, however, did not file a notice of appeal until May 7, 2012. Although appellant filed a notice of appeal within the fifteen-day grace period allowed by Rule 26.3, she did not file a motion for extension of time to file a notice of appeal, which was due on May 8, 2012. *See* TEX. R. APP. P. 26.3.

We, therefore, ordered appellant to file a response presenting a reasonable explanation for failing to file a notice of appeal in a timely manner. We warned that if appellant failed to respond within the time provided, the appeal would be dismissed. *See* TEX. R. APP. P. 42.3(c). Appellant failed to respond. Therefore, this appeal is dismissed. Costs of appeal are taxed against appellant.

PER CURIAM