



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-20-00192-CV

COLLINS MOTOR COMPANY, L.L.C., JODY WADE ENTERPRISES, L.L.C.,
AND JODY R. WADE, Appellants

v.

FIRSTCAPITAL BANK OF TEXAS, N.A., Appellee

On Appeal from the 89th District Court
Wichita County, Texas
Trial Court No. DC89-CV2020-0682

Before Kerr, Birdwell, and Bassel, JJ.
Memorandum Opinion by Justice Kerr

MEMORANDUM OPINION

Pro se appellant Jody R. Wade filed a notice of appeal from the trial court's April 15, 2020 "Order Granting Temporary Injunction and Setting Case for Trial" on behalf of himself, Collins Motor Company, L.L.C., and Jody Wade Enterprises, L.L.C. Because appellants challenge an appealable interlocutory order, this appeal is accelerated. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(4); Tex. R. App. P. 28.1(a). The notice of appeal was thus due May 5, 2020, but it was not filed until May 11, 2020, making it untimely. *See* Tex. R. App. P. 26.1(b), 28.1(b).

On July 14, 2020, we notified the parties by letter of our concern that we lack jurisdiction over this appeal because the notice of appeal was untimely filed. *See* Tex. R. App. P. 26.1. We warned that we could dismiss this appeal unless appellants or any party wanting to continue the appeal filed a response by July 24, 2020, showing a reasonable explanation for the late filing of the notice of appeal. *See* Tex. R. App. P. 10.5(b), 26.3(b), 42.3(a).

But the notice of appeal's timeliness was not our only concern. Wade is not an attorney, and a company may not appear in court through a member who is not an attorney. *See, e.g., Kunstoplast of Am., Inc. v. Formosa Plastics Corp., USA*, 937 S.W.2d 455, 456 (Tex. 1996) ("Generally a corporation may be represented only by a licensed attorney"); *Sherman v. Boston*, 486 S.W.3d 88, 95 (Tex. App.—Houston [14th Dist.] 2016, pet. denied) ("Legal entities, such as . . . a limited liability company, generally may appear in a district or county court only through a licensed attorney.").

In our July 14 letter, we also warned that we could dismiss the appeal unless a licensed attorney filed a notice of appearance for Collins Motor Company and Jody Wade Enterprises by July 24, 2020. *See* Tex. R. App. P. 42.3(b), (c).

On July 22, 2020, Wade directly emailed Chief Justice Bonnie Sudderth and the Clerk of the Court requesting “an extension on [his] appeal.” The next day, we wrote to Wade notifying him that direct communication with court justices is prohibited by the Texas Rules of Appellate Procedure, which mandate that parties and counsel communicate with us about a case only through the clerk. *See* Tex. R. App. P. 9.6. We explained that if he wanted to communicate with us about his case, he could call only the clerk’s office because the Texas Rules of Appellate Procedure do not authorize anyone else at the court to speak with him about his case through any communication method. We asked Wade that if his email was an attempt to respond to our July 14, 2020 letter, that he submit his response through the electronic filing system or by mail. We further explained that if he wanted an order or other relief from us, he was required to file a motion. *See* Tex. R. App. P. 10.1(a). We have received no response, motion, or notice of appearance for Collins Motor Company and Jody Wade Enterprises.

Because Collins Motor Company and Jody Wade Enterprises have failed to obtain counsel as directed by our July 14, 2020 letter, we dismiss their appeal. *See* Tex. R. App. P. 42.3(c), 43.2(f), 44.3; *Infracon USA, LLC v. Funding Circle Partners, LP*, No.

02-19-00423-CV, 2020 WL 719431, at *2 (Tex. App.—Fort Worth Feb. 13, 2020, pet. denied) (per curiam) (mem. op.).

We must dismiss Wade’s appeal as well. As noted, the notice of appeal was due May 5, 2020, but it was not filed until May 11, 2020, making it six days late. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(4); Tex. R. App. P. 26.1(b), 28.1(a), (b). The time for filing a notice of appeal is jurisdictional in this court, and without a timely filed notice of appeal or a timely filed extension request, we must dismiss the appeal. *See* Tex. R. App. P. 2, 25.1(b), 26.1, 26.3, 28.1(b); *Jones v. City of Houston*, 976 S.W.2d 676, 677 (Tex. 1998); *Verburgt v. Dornier*, 959 S.W.2d 615, 617 (Tex. 1997). 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 period in which the appellant would be entitled to move to extend the filing deadline under Rule 26.3. *See Jones*, 976 S.W.2d at 677; *Verburgt*, 959 S.W.2d at 617; *see also* Tex. R. App. P. 26.1, 26.3, 28.1(b). But even when an extension motion is implied, the appellant still must reasonably explain the need for an extension. *See Jones*, 976 S.W.2d at 677; *Verburgt*, 959 S.W.2d at 617.

Because Wade’s notice of appeal was untimely and he did not provide a reasonable explanation for needing an extension, we dismiss his appeal for want of jurisdiction. *See* Tex. R. App. P. 2, 25.1(b), 26.3, 28.1(b), 42.3(a), 43.2(f), 44.3; *see In re J.D.*, No. 02-19-00258-CV, 2019 WL 3955177, at *1 (Tex. App.—Fort Worth Aug. 22, 2019, no pet.) (mem. op.) (dismissing accelerated appeal for want of jurisdiction

when untimely notice of appeal was filed within the 15-day period in which appellant could move for an extension under Rule 26.3 and appellant failed to provide a reasonable explanation for needing an extension).

/s/ Elizabeth Kerr
Elizabeth Kerr
Justice

Delivered: August 27, 2020