



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-09-00075-CV

LARRY J. WADE, Appellant

V.

KLAAS VELLENGA, ROELIE VELLENGA,
AND VELLENGA DAIRY, L.P., Appellees

On Appeal from the 62nd Judicial District Court
Hopkins County, Texas
Trial Court No. CV 38,436

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Justice Carter

MEMORANDUM OPINION

Larry J. Wade has appealed from a summary judgment rendered against him in his claim against Klaas Vellenga, Roelie Vellenga, and Vellenga Dairy, L.P. The judgment was signed April 21, 2009, with a timely motion for new trial filed thereafter. The notice of appeal was thus due ninety days after the date of judgment, on or before July 20, 2009. TEX. R. APP. P. 26.3. The notice of appeal was filed fourteen days after the expiration of that time, on August 3, 2009.

Wade did not file a motion to extend time to file the notice of appeal. The Texas Supreme Court has concluded that the filing of a motion to extend time is implied with the late filing of the notice of appeal. *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997). The court has also, however, stated that to receive such an extension, an appellant must file a motion complying with Rule 10.5(b). *Hone v. Hanafin*, 104 S.W.3d 884, 885 n.1 (Tex. 2003); *see* TEX. R. APP. P. 10.5(b).

It remains necessary for an appellant to offer a reasonable explanation for his or her failure to timely file a notice of appeal. Rule 10.5(b) requires the appellant to "reasonably explain" his or her need for an extension. TEX. R. APP. P. 10.5(b)(1)(C), (2)(A); *see also Hone*, 104 S.W.3d at 886.

On August 20, 2009, we contacted counsel by letter, explaining the need for such an explanation, and warning that failing to provide one could result in the dismissal of the appeal for want of jurisdiction. The response was due on or before August 31, 2009.

Another twenty-five days has elapsed beyond that date, and we have received no response from counsel.

We dismiss the appeal for want of jurisdiction.

Jack Carter
Justice

Date Submitted: October 1, 2009
Date Decided: October 2, 2009