



NUMBER 13-16-00524-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

JENA GONZALEZ,

Appellant,

v.

SOUTH TEXAS VETERINARY ASSOCIATES, INC.,

Appellee.

**On appeal from the County Court at Law No. 5
of Nueces County, Texas.**

MEMORANDUM OPINION

**Before Justices Rodriguez, Garza, and Longoria
Memorandum Opinion Per Curiam**

Appellant, Jena Gonzalez, attempted to perfect an appeal from a judgment entered by the County Court at Law No. 5 of Nueces County, Texas, in cause number 2011-CCV-61850-5. Judgment in this cause was signed on August 13, 2016. No motion for new trial was filed. Appellant filed a notice of appeal on September 14, 2016 which states

that appellant did not receive notice of the judgment until it was received in the mail on August 19, 2016, “therefore, this NOTICE OF APPEAL is timely filed.”

Texas Rule of Appellate Procedure 26.1 provides that an appeal is perfected when notice of appeal is filed within thirty days after the judgment is signed, unless a motion for new trial is timely filed. TEX. R. APP. P. 26.1(a)(1). Where a timely motion for new trial has been filed, notice of appeal shall be filed within ninety days after the judgment is signed. TEX. R. APP. P. 26.1(a).

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 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, 617–18, 619 (1997) (construing the predecessor to Rule 26). However, appellant must provide a reasonable explanation for the late filing: it is not enough to simply file a notice of appeal. *Id.*; *Woodard v. Higgins*, 140 S.W.3d 462, 462 (Tex. App.—Amarillo 2004, no pet.); *In re B.G.*, 104 S.W.3d 565, 567 (Tex. App.—Waco 2002, no pet.).

Pursuant to Texas Rule of Appellate Procedure 26.1, appellant’s notice of appeal was due on September 12, 2016, but was not filed until September 14, 2016. On October 5, 2016, the Clerk of this Court notified appellant of this defect so that steps could be taken to correct the defect, if it could be done. Appellant was advised that, if the defect was not corrected within ten days from the date of receipt of this Court’s letter, the appeal would be dismissed. To date, no response has been received from appellant providing a reasonable explanation for the late filing of the notice of appeal.

When a party adversely affected by the judgment does not receive notice within twenty days after the judgment is signed, the period for filing the appeal begins to run from the date the party received notice, provided no more than ninety days have elapsed since the signing of the judgment or other appealable order. See TEX. R. CIV. P. 306a(4); TEX. R. APP. P. 4.2(a)(1). Appellant's notice of appeal states she did not receive notice of the judgment until August 19, 2016, which is within twenty days of the date the judgment was signed. Accordingly, rule 306a(4) is inapplicable. See *Levit v. Adams*, 850 S.W.2d 469, 470 (Tex. 1993); *Jon v. Stanley*, 150 S.W.3d 244, 248 (Tex. App.—Texarkana 2004, no pet.).

The Court, having examined and fully considered the documents on file, appellant's failure to timely perfect her appeal, and appellant's failure to respond to this Court's notice, is of the opinion that the appeal should be dismissed for want of jurisdiction. Accordingly, the appeal is hereby DISMISSED FOR WANT OF JURISDICTION. See TEX. R. APP. P. 42.3(a)(c).

PER CURIAM

Delivered and filed the
21st day of December, 2016.