



NUMBER 13-17-00380-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN THE INTEREST OF Z.W.M. AND H.A.M., CHILDREN

**On Appeal from the 317th District Court
of Jefferson County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Longoria and Hinojosa
Memorandum Opinion by Justice Hinojosa**

Appellant John W. Barry, proceeding pro se, attempted to perfect an appeal from a child support review order signed on April 20, 2017 in cause number C-220,887-A in the 317th District Court of Jefferson County, Texas.¹ We dismiss this appeal as untimely filed.

¹ His appeal was transferred to this Court from the Ninth Court of Appeals by order of the Texas Supreme Court. See TEX. GOV'T CODE ANN. § 22.220(a) (West, Westlaw through Ch. 49, 2017 R.S.) (delineating the jurisdiction of appellate courts); TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through Ch. 49, 2017 R.S.) (granting the supreme court the authority to transfer cases from one court of appeals to another at any time that there is "good cause" for the transfer).

Absent a timely filed notice of appeal, an appellate court lacks jurisdiction over the appeal. *In re United Services Auto. Ass'n*, 307 S.W.3d 299, 307 (Tex. 2010). Generally, a notice of appeal is due within thirty days after the judgment is signed. See TEX. R. APP. P. 26.1. The deadline to file a notice of appeal is extended to ninety days after the date the judgment is signed if, within thirty days after the judgment is signed, any party timely files a motion for new trial, motion to modify the judgment, motion to reinstate, or, under certain circumstances, a request for findings of fact and conclusions of law. See *id.* R. 26.1(a); TEX. R. CIV. P. 296, 329b(a),(g). The time to file a notice of appeal also may be extended if, within fifteen days after the deadline to file the notice of appeal, a party properly files a motion for extension. See TEX. R. APP. P. 10.5(b), 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 rule 26.1, but within the fifteen-day extension period provided by rule 26.3. See *id.* R. 26.1, 26.3; *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997); *City of Dallas v. Hillis*, 308 S.W.3d 526, 529 (Tex. App.—Dallas 2010, pet. denied). Although a motion for extension of time is necessarily implied, appellant must still provide a reasonable explanation for failing to file the notice of appeal timely. See TEX. R. APP. P. 10.5(b)(1)(C), (2)(A); *Jones v. City of Houston*, 976 S.W.2d 676, 677 (Tex. 1998); *Felt v. Comerica Bank*, 401 S.W.3d 802, 806 (Tex. App.—Houston [14th Dist.] 2013, no pet.). Under this standard, any conduct short of deliberate or intentional noncompliance qualifies as a reasonable explanation. *Hone v. Hanafin*, 104 S.W.3d 884, 886–87 (Tex. 2003) (per curiam).

Here, the trial court signed the child support review order on April 20, 2017. Because appellant did not file a post-judgment motion or request for findings of fact and

conclusions of law, appellant's notice of appeal was due by May 20, 2017, which was a Saturday, so the deadline was extended under the rules until the next business day, May 22, 2017. See TEX. R. APP. P. 4.1, 26.1. Appellant's notice of appeal was not filed until June 17, 2017, after the rule 26.1 deadline and after the fifteen-day extension period. See *id.* R. 26.1, 26.3. On July 19, 2017, the Clerk of this Court notified appellant that it appeared that the appeal was not timely perfected. Appellant was advised that the appeal would be dismissed if the defect was not corrected within ten days from the date of receipt of the Court's directive. Appellant did not file a response or otherwise provide a reasonable explanation for the late filing.

The Court, having examined and fully considered the documents on file and appellant's failure to timely perfect his appeal, 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). Pending motions, if any, are DISMISSED as moot.

LETICIA HINOJOSA
Justice

Delivered and filed the
17th day of August, 2017.