



NUMBER 13-17-00418-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

MARK SOLIS,

Appellant,

v.

MEMORIAL FAMILY PARTNERS, LTD.,

Appellee.

On appeal from the County Court at Law No. 2
of Nueces County, Texas.

MEMORANDUM OPINION

**Before Justices Rodriguez, Contreras, and Benavides
Memorandum Opinion by Justice Rodriguez**

Appellant Mark Solis attempted to perfect an appeal from a summary judgment signed on February 27, 2017 in cause number 2015CCV-62514-2 in the County Court at Law No. 2 of Nueces County, Texas. Solis had filed a negligence and premises liability lawsuit against Memorial Family Partners, Ltd. based on an incident that occurred on its

premises. The trial court granted summary judgment in favor of Memorial Family Partners, Ltd. and dismissed the case. We dismiss this appeal as untimely filed.

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 final judgment on February 27, 2017. Appellant filed a motion for reconsideration and motion for new trial on March 28, 2017. The trial court denied the motion for reconsideration and new trial on May 17, 2017. Because appellant filed a motion for new trial, appellant's notice of appeal was due ninety days later, or by May 28, 2017, which was a Sunday, so the deadline was extended under the rules until the next business day, May 29, 2017. See TEX. R. APP. P. 4.1, 26.1. Appellant did not file his notice of appeal until July 25, 2017. See *id.* R. 26.1. The notice of appeal was not filed within the ninety day period provided by the rules or within the fifteen day period within which to obtain an extension of time.

On July 26, 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); see also *id.* R. 42.3(b),(c).

NELDA V. RODRIGUEZ
Justice

Delivered and filed the
30th day of August, 2017.