



**NUMBER 13-17-00533-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**PAUL MINIX,**

**Appellant,**

**v.**

**GM MOTORS AND KIA DEALERSHIP,**

**Appellees.**

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**On appeal from the 267th District Court  
of Victoria County, Texas.**

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**MEMORANDUM OPINION**

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

Appellant, Paul Minix, attempted to perfect an appeal from a judgment entered by the 267th District Court of Victoria County, Texas, in cause number 15-04-77819-C. We dismiss for want of jurisdiction.

On January 31, 2017, the trial court entered an order granting appellee's motion to dismiss pursuant to Chapter 14 of the Texas Civil Practice and Remedies Code. Appellant filed a motion for rehearing/reconsideration on February 27, 2017 and a notice of appeal on September 25, 2017. On September 29, 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.

On October 25, 2017, appellant filed an amended notice of appeal setting forth the dates motions were filed subsequent to the entry of the final judgment of January 31, 2017. Appellant states that he timely filed motions for reconsideration of the dismissal order and waited for the trial court to rule on them. He states that on August 14, 2017 he filed a motion for the trial court to process his prior motions as a notice of appeal since the court refused to rule on his motion for rehearing.

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 or motion to reinstate 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. Dornier*, 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 May 1, 2017, but was not filed until September 25, 2017. Texas Rule of Appellate Procedure 26.1 establishes the deadline for filing a notice of appeal based on the date that the judgment was signed. See TEX. R. APP. P. 26.1(a). The clerk's record contains "Plaintiff's Second Notice of Appeal or Reconsideration on order of Court's Dismissal line of Events" filed on August 21, 2017. The document does not satisfy the requirements of Texas Rule of Appellate Procedure 25.1(d) for filing a notice of appeal; moreover, it was not filed on or before May 1, 2017. See TEX. R. APP. P. 25.1(d).

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). All pending motions are likewise dismissed.

GINA M. BENAVIDES  
Justice

Delivered and filed the  
9th day of November, 2017.