



NUMBER 13-22-00411-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

**IN THE MATTER OF THE MARRIAGE OF BELIA ORNELAS
AND CESAR ORNELAS**

**On appeal from the 444th District Court
of Cameron County, Texas.**

MEMORANDUM OPINION

**Before Justices Longoria, Hinojosa, and Silva
Memorandum Opinion by Justice Longoria**

Appellant Cesar Ornelas filed a notice of appeal regarding the trial court's final decree of divorce in trial court cause number 2020-DCL-02369 in the 444th District Court of Cameron County, Texas. The final decree of divorce was signed on June 8, 2022. Appellant filed a motion to correct, modify, or reform the final decree of divorce on July 7, 2022. Appellant filed the notice of appeal on September 8, 2022. On September 8, 2022, the Clerk of this Court notified appellant that his notice of appeal had not been timely filed,

requested correction of this defect, if possible, and advised appellant that the appeal would be dismissed if the defect was not corrected within ten days. See TEX. R. APP. P. 37.1, 42.3(a). Appellant did not respond to the Clerk's notice, request an extension of time to file the notice of appeal, offer a reasonable explanation for failing to file the notice of appeal in a timely manner, or otherwise show that his appeal had been timely filed.

We construe the Texas Rules of Appellate Procedure “reasonably, yet liberally, so that the right to appeal is not lost by imposing requirements not absolutely necessary to effect the purpose of a rule.” *Chen v. Razberi Techs., Inc.*, 645 S.W.3d 773, 775 (Tex. 2022) (quoting *Verburgt v. Dorner*, 959 S.W.2d 615, 616–17 (Tex. 1997)); see *Jardon v. Pfister*, 593 S.W.3d 810, 820 (Tex. App.—El Paso 2019, no pet.). Nevertheless, this Court has the authority to dismiss an appeal “for want of jurisdiction,” “for want of prosecution,” or “because the appellant has failed to comply with a requirement of [the appellate] rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.” TEX. R. APP. P. 42.3(a), (b), (c); see, e.g., *Smith v. DC Civil Constr., LLC*, 521 S.W.3d 75, 76 (Tex. App.—San Antonio 2017, no pet.).

“A timely notice of appeal is an essential prerequisite for the appellate court’s jurisdiction.” *Mitschke v. Borromeo*, 645 S.W.3d 251, 253 (Tex. 2022). If the appeal was not timely perfected, we must dismiss the appeal for lack of jurisdiction. See *In re J.J.R.*, 599 S.W.3d 605, 610 (Tex. App.—El Paso 2020, no pet.); *In re L.G.*, 517 S.W.3d 275, 277 (Tex. App.—San Antonio 2017, pet. denied) (per curiam); *Baker v. Baker*, 469 S.W.3d 269, 272 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

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); *Young v. Di Ferrante*, 553 S.W.3d 125, 128 (Tex. App.—Houston [14th Dist.] 2018, pet. denied). The time to file a notice of appeal may also 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*, 959 S.W.2d at 617–18 (construing the predecessor to Rule 26.1); *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.” *Baker v. Regency Nursing & Rehab. Ctrs., Inc.*, 534 S.W.3d 684, 685 (Tex. App.—Corpus Christi—Edinburg 2017, no pet.); see *Jones v. City of Houston*, 976 S.W.2d 676, 677 (Tex. 1998); *Batra v. Covenant Health Sys.*, 562 S.W.3d 696, 705 (Tex. App.—Amarillo 2018, pet. denied).

Here, the final decree of divorce was signed on June 8, 2022. Appellant filed a post-judgment motion to correct, reform, or modify the final decree of divorce on July 7, 2022. Thus, appellant’s notice of appeal was due on September 6, 2022, but it was not

filed until September 7, 2022. See TEX. R. APP. P. 26.1(a). Appellant's notice of appeal was filed within the fifteen-day grace period provided by Rule 26.3, thus warranting an implied motion for extension of time, however, appellant has failed to provide a reasonable explanation for failing to timely file the notice of appeal. See *Jones*, 976 S.W.2d at 677; *Baker*, 534 S.W.3d at 685. Appellant's notice of appeal was untimely, and under these circumstances, we lack jurisdiction and must dismiss the appeal. See TEX. R. APP. P. 42.3(a); *In re L.G.*, 517 S.W.3d at 277; *Haase v. Abraham, Watkins, Nichols, Sorrels, Agosto & Friend, LLP*, 404 S.W.3d 75, 80 (Tex. App.—Houston [14th Dist.] 2013, no pet.).

The Court, having examined and fully considered the documents on file and the applicable law, is of the opinion that this appeal should be dismissed. Accordingly, we dismiss this appeal for want of jurisdiction. See TEX. R. APP. P. 42.3(a).

NORA L. LONGORIA
Justice

Delivered and filed on the
29th day of September, 2022.