

NO. 12-09-00301-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***WILLIAM C. GAMBLE,
APPELLANT***

§ APPEAL FROM THE 369TH

V.

§ JUDICIAL DISTRICT COURT OF

***CO 2 J. PEPIN
AND CAPTAIN MCDOWELL,
APPELLEES***

§ ANDERSON COUNTY, TEXAS

***MEMORANDUM OPINION
PER CURIAM***

This appeal is being dismissed for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a). The trial court's judgment was signed on July 24, 2009. Under rule of appellate procedure 26.1, the notice of appeal must be filed within thirty days after the judgment is signed. Appellant, William C. Gamble, did not file a motion for new trial. *See* TEX. R. APP. P. 26.1(a) (providing that notice of appeal must be filed within ninety days after judgment signed if any party timely files motion for new trial). Therefore, his notice of appeal was due to have been filed no later than August 24, 2009. Gamble's notice of appeal was postmarked August 31, 2009 and received on September 1, 2009. Because Gamble's notice of appeal was not filed on or before August 24, 2009, it was untimely, and this court has no jurisdiction of the appeal.

On October 13, 2009, this court notified Gamble pursuant to Texas Rules of Appellate Procedure 37.1 and 42.3 that his notice of appeal was untimely and there was no timely motion for an extension of time to file the notice of appeal as permitted by Texas Rule of Appellate Procedure 26.3. Gamble was also informed that the notice of appeal was filed before the deadline for a motion to extend time for filing the notice of

appeal. Accordingly, Gamble was notified that this court would imply a motion to extend the time for filing the notice of appeal. *See Verburgt v. Dorner*, 959 S.W.2d 615, 615 (Tex. 1997). He was then informed that the appeal would be dismissed for want of jurisdiction unless, or on before October 23, 2009, he informed the court, in writing, of facts to reasonably explain his need for an extension of time to file the notice of appeal. *See id.*

On October 23, 2009, Gamble filed a motion requesting an extension to time to file his notice of appeal, which included an explanation of his need for the extension. However, the motion was overruled because it was unsigned and did not include a certificate of service. *See* TEX. R. APP. P. 9.1(a), 9.5(d).

Because this court is not authorized to extend the time for perfecting an appeal except as provided by Texas Rules of Appellate Procedure 26.1 and 26.3, the appeal is ***dismissed for want of jurisdiction***. *See* TEX. R. APP. P. 42.3(a).

Opinion delivered November 12, 2009.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)