

NO. 12-12-00193-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*DONOVAN DWIGHT SIMMS,
APPELLANT*

§

APPEAL FROM THE THIRD

V.

§

JUDICIAL DISTRICT COURT

*CHRISTY M. HOISINGTON, ET AL,
APPELLEES*

§

ANDERSON COUNTY, TEXAS

***MEMORANDUM OPINION
PER CURIAM***

This appeal is being dismissed for want of jurisdiction pursuant to Texas Rule of Appellate Procedure 42.3(a). The trial court's judgment was signed on February 8, 2012. Under rule of appellate procedure 26.1, the notice of appeal must be filed within thirty days after the judgment is signed. Appellant, Donovan Dwight Simms, 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 March 9, 2012. Simms did not file his notice of appeal until May 14, 2012. Because the notice of appeal was not filed on or before March 9, 2012, it was untimely, and this court does not have jurisdiction of the appeal.

On May 25, 2012, this court notified Simms 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. *See* TEX. R. APP. P. 26.3. Simms was further notified that the appeal would be dismissed unless, on or before June 4, 2012, the information in the appeal was amended to show the jurisdiction of this court.

On June 6, 2012, Simms filed a motion for extension of time to file the notice of appeal. However, the motion was untimely because it was not filed on or before March 26, 2012.¹ See TEX. R. APP. P. 26.3 (appellate court may extend time to file notice of appeal if motion for extension of time filed within fifteen days after deadline for filing notice of appeal). Therefore, the motion must be overruled.

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 motion for extension of time is overruled, and the appeal is *dismissed for want of jurisdiction*. See TEX. R. APP. P. 42.3(a).

Opinion delivered June 13, 2012.

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

(PUBLISH)

¹ This court did not imply a motion for extension of time because the notice of appeal was not filed within the time permitted for filing such a motion. See *Verburgt v. Dornier*, 959 S.W.2d 615, 615 (Tex. 1997) (motion for extension of time is implied when party, in good faith, files notice of appeal within time permitted for filing motion for extension of time).



**COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT**

JUNE 13, 2012

NO. 12-12-00193-CV

DONOVAN DWIGHT SIMMS,
Appellant
V.
CHRISTY M. HOISINGTON, ET AL,
Appellees

Appeal from the 3rd Judicial District Court
of Anderson County, Texas. (Tr.Ct.No. 3-41575)

THIS CAUSE came to be heard on the appellate record; and the same being considered, it is the opinion of this court that this court is without jurisdiction of the appeal, and that the appeal should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED by this court that this appeal be, and the same is, hereby **dismissed for want of jurisdiction**; and that this decision be certified to the court below for observance.

By per curiam opinion.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.