

NO. 12-12-00230-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***HUGO AZPEITIA,
APPELLANT***

§

APPEAL FROM THE 4TH

V.

§

JUDICIAL DISTRICT COURT

***MICHAEL PEPPER AND C. PEPPER,
APPELLEES***

§

RUSK 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 March 15, 2012. Under rule of appellate procedure 26.1, the notice of appeal must be filed within thirty days after the judgment is signed. But Appellant filed 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 June 13, 2012. Appellant's notice of appeal was not filed until July 2, 2012. Because Appellant's notice of appeal was not filed on or before June 13, 2012, it was untimely.

On July 13, 2012, this court notified Appellant 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. Appellant was further notified that the appeal would be dismissed for want of jurisdiction unless the information in the appeal was amended, on or before July 23, 2012, to show this court's jurisdiction of the appeal. The July 23, 2012 deadline has passed, and Appellant has neither shown this court's jurisdiction of the appeal nor otherwise responded to its July 13, 2012 notice.

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*.¹ See TEX. R. APP. P. 42.3(a).

Opinion delivered July 25, 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. Dorner*, 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

JULY 25, 2012

NO. 12-12-00230-CV

HUGO AZPEITIA,
Appellant
v.
MICHAEL PEPPER AND C. PEPPER,
Appellees

Appeal from the 4th Judicial District Court
of Rusk County, Texas. (Tr.Ct.No. 2011-226)

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.