COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON

ORDER

Appellate case name: Robert Holmes v. Craig Cassel

Appellate case number: 01-16-00114-CV

Trial court case number: 938067-003

Trial court: County Civil Court at Law No. 4 of Harris County

Appellee filed a motion to dismiss this appeal on the basis that appellant's notice of appeal was filed thirteen days late. Appellant subsequently filed a response and motion to extend the time to file his notice of appeal.

The final judgment underlying this appeal was entered on October 21, 2015. Because appellant timely filed a motion for new trial on November 19, 2015, the deadline for filing a notice of appeal of the judgment was January 19, 2016. *See* TEX. R. APP. P. 26.1(a) (notice of appeal due within 90 days after judgment is signed if any party timely files motion for new trial). Appellant filed his notice of appeal with the trial court on February 1, 2016, thirteen days after the deadline. However, "[t]he appellate court may extend the time to file the notice of appeal if, within 15 days after the deadline for filing the notice of appeal, the party: (a) files in the trial court the notice of appeal; and (b) files in the appellate court a motion complying with Rule 10.5(b)." TEX. R. APP. P. 26.3. Although appellant's February 1, 2016 notice of appeal was filed within the 15-day period, appellee argues that the notice was still untimely because appellant failed to file an extension motion before the 15-day period expired on February 3, 2016.

Contrary to appellee's argument, 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 Texas Rule of Appellate Procedure 26.1, but within the 15–day grace period provided by Rule 26.3 for filing a motion for extension of time. *See Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997) (construing the predecessor to Rule 26). Accordingly, we **deny** appellee's motion to dismiss and **grant** appellant's motion to extend the time to file his notice of appeal.

It is so ORDERED.

Judge's signature: /s/ Michael Massengale
☑ Acting individually ☐ Acting for the Court

Date: July 21, 2016