

**Dismissed and Opinion filed November 9, 2000.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-00-00685-CV**  
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**RUSSELL S. ALLEN, Appellant**

**V.**

**FRANK LEE PETRYSZAK, Appellee**

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**On Appeal from the 334th District Court  
Harris County, Texas  
Trial Court Cause No. 97-35658**

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**O P I N I O N**

This is an appeal from a take nothing judgment signed March 18, 2000. Appellant filed a request for findings of fact and conclusions of law on April 12, 2000. Appellant then filed his notice of appeal on June 12, 2000.

On October 23, 2000, appellee filed a motion to dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3. Appellant filed no response.

When appellant has filed a timely motion for new trial, motion to modify the judgment, motion to reinstate, or a request for findings of fact and conclusions of law, the notice of appeal must be filed within

ninety days after the date the judgment is signed. *See* TEX. R. APP. P. 26.1(a). Otherwise, the notice of appeal must be filed within thirty days after the judgment is signed. *See* TEX. R. APP. P. 26.1. Here, appellant's request for findings of fact and conclusions of law was not filed timely.<sup>1</sup> A request for findings of fact and conclusions of law must be filed within twenty days after judgment is signed. *See* TEX. R. CIV. P. 296. Appellant's request was due on April 7, 2000, but was not filed until April 12, 2000. Accordingly, without a timely request for findings of fact or other appropriate post-judgment motion, appellant's notice of appeal was due thirty days after the judgment was signed. *See* TEX. R. APP. P. 26.1.

Appellant's notice of appeal was not filed timely. 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 grace period provided by Rule 26.3 for filing a motion for extension of time. *See Verburgt v. Dorner*, 959 S.W.2d 615, 617-18 (1997) (construing the predecessor to Rule 26). However, the appellant must offer a reasonable explanation for failing to file the notice of appeal in a timely manner. *See* TEX. R. APP. P. 26.3, 10.5(b)(1)(C); *Verburgt*, 959 S.W.2d at 617-18. Appellant's notice of appeal was not filed within the fifteen-day period provided by rule 26.3. Therefore, no motion for extension of time can be implied.

In the absence of a timely filed notice of appeal, this court has no jurisdiction. Accordingly, the appeal is ordered dismissed.

PER CURIAM

Judgment rendered and Opinion filed November 9, 2000.

Panel consists of Chief Justice Murphy, Justices Amidei and Hudson.

Do Not Publish. — TEX. R. APP. P. 47.3(b).

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<sup>1</sup> Appellant's prematurely submitted proposed findings do not render his late request timely. *See Samuelson v. Alvarado*, 847 S.W.2d 319, 321 (Tex. App.—El Paso 1993, no writ).