

**Dismissed and Opinion filed November 30, 2000.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-00-01253-CV**  
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**JAMES L. ZACHARY, Appellant**

**V.**

**BOBBY STEWART AND OLSHUN LUMBER COMPANY, Appellees**

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**On Appeal from the 164th District Court  
Harris County, Texas  
Trial Court Cause No. 98-44914**

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**OPINION**

This is an attempted appeal from a judgment, signed May 22, 2000. Appellant filed a timely motion for new trial on June 20, 2000. Appellant's notice of appeal was filed on October 5, 2000.

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).

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.

On November 8, 2000, notification was transmitted to all parties of the Court's intent to dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a). Appellant filed no response.

Accordingly, the appeal is ordered dismissed.

PER CURIAM

Judgment rendered and Opinion filed November 30, 2000.

Panel consists of Justices Anderson, Fowler, and Edelman.

Do Not Publish — TEX.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