

**Dismissed and Opinion filed January 31, 2002.**



**In The**  
**Fourteenth Court of Appeals**

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**NO. 14-02-00016-CV**

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**ELISA WILSON and JAMES WILSON, Appellants**

**V.**

**ROBERT CURTIS WALLACE, Appellee**

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**On Appeal from the 11th District Court  
Harris County, Texas  
Trial Court Cause No. 99-09099**

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**MEMORANDUM OPINION**

This is an appeal from a summary judgment signed July 11, 2001. On August 10, 2001, appellants filed a motion for new trial. Accordingly, appellants' notice of appeal was due on October 9, 2001. The notice of appeal was not filed until January 2, 2002.

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, 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 January 15, 2002, appellee filed a motion to dismiss the appeal for want of jurisdiction because appellant's notice of appeal was untimely. TEX. R. APP. P. 42.3(a). The motion is granted. Appellee also filed a motion for sanctions for filing a frivolous appeal. *See* TEX. R. APP. P. 45. The Court does not have a sufficient record to support an award of damages. The motion for sanctions is denied.

Accordingly, the appeal is ordered dismissed.

PER CURIAM

Judgment rendered and Opinion filed January 31, 2002.

Panel consists of Chief Justice Brister, Justices Fowler and Seymore.

Do Not Publish — TEX.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