Dismissed and Opinion filed August 23, 2001.

In The

Fourteenth Court of Appeals

NO. 14-01-00669-CV

WILLIAM SAMUEL ROWLAND, Appellant

V.

GRACIE DIANNE ROWLAND, Appellee

On Appeal from the 300th District Court
Brazoria County, Texas
Trial Court Cause No. 16117*RH01

M E M O R A N D U M O P I N I O N

This is an attempted appeal from a final decree of divorce signed January 17, 2001. Appellant filed an untimely motion for new trial on April 3, 2001. Appellant's notice of appeal was filed June 25, 2001.

The notice of appeal must be filed within thirty days after the judgment is signed when appellant has not 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. *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.

On July 31, 2001, appellee filed a motion to dismiss the appeal for want of jurisdiction. Moreover, on August 9, 2001, 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 a response on August 13, 2001. Appellant's response, however, fails to demonstrate that this Court has jurisdiction to entertain the appeal.

We recognize that appellant sought relief pursuant to rule 306a of the Texas Rules of Civil Procedure and rule 4.2 of the Texas Rules of Appellate Procedure. These rules provide that if within 20 days after a judgment is signed, a party adversely affected by it or his attorney has neither received notice of the judgment from the trial court clerk nor acquired actual knowledge of the judgment, the time periods for filing post-judgment motions and/or the notice of appeal begin on the date notice or actual knowledge was received. TEX. R. CIV. P. 306a(4); TEX. R. APP. P. 4.2(a)(1). To establish application of these rules, the party adversely affected must prove in the trial court on sworn motion the date either he or his attorney first received notice *or* acquired actual knowledge and that this date was more than twenty days after the judgment was signed. TEX. R. CIV. P. 306a(5). In this case, appellant's motion and the affidavit accompanying it establish only that *he received notice* more than twenty days after the date the judgment was signed. Neither the motion nor the affidavit establish a lack of actual knowledge within twenty days of the date of judgment. Specifically, the motion states: "Movant, WILLIAM SAMUEL ROWLAND, received no notice of the signing of the Final Decree of Divorce

within twenty (20) days of the signing thereof and only received notice of the existence of a Final Decree of Divorce on March 12, 2001." This is insufficient under rules 306a and 4.2. These rules require proof of both a lack of notice and lack of actual knowledge. *Womack-Humphreys Architects, Inc. v. Barrasso*, 886 S.W.2d 809, 815 (Tex. App.—Dallas 1994, writ denied) (holding that rule 306a requires party to negate not only timely receipt of clerk's notice, but also acquisition of actual knowledge of judgment within twenty days of date judgment was signed). Appellant merely negated notice from the trial court clerk; nothing in the motion or the affidavit speaks to a lack of actual knowledge. Thus, the motion was insufficient to entitle appellant to relief. *Id.*

Moreover, the express language of rule 306a operates to charge the movant with notice or actual knowledge that his *attorney* acquires. *Id.* Neither appellant's motion nor his affidavit asserts that appellant's attorney did not receive notice or actual knowledge of the judgment within twenty days of the date it was signed. Therefore, the motion was insufficient on this basis as well to entitle appellant to relief. *Id.*

Accordingly, we grant appellee's motion to dismiss and order the appeal dismissed.

PER CURIAM

Judgment rendered and Opinion filed August 23, 2001.
Panel consists of Justices Yates, Edelman, and Wittig.
Do Not Publish — TEX. R. APP. P. 47.3(b).