



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-13-01731-CV**

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**JAMES POLK, Appellant  
V.  
DALLAS COUNTY, TEXAS, Appellee**

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**On Appeal from the 134th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-10-03558**

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**MEMORANDUM OPINION**

Before Chief Justice Wright, and Justices Lang-Miers and Brown  
Opinion by Chief Justice Wright

Before the Court is appellant's March 6, 2014 opposed motion to extend time to file notice of appeal. Because we conclude appellant did not provide a reasonable explanation for the need for an extension, we deny appellant's motion and dismiss this appeal for lack of jurisdiction.

The trial court signed the judgment in this case on August 5, 2013. Appellant timely filed a motion to reconsider on August 19, 2013. Thus, appellant's notice of appeal was due on November 4, 2013, ninety days after the judgment was signed. TEX. R. APP. P. 26.1(a). Appellant's notice of appeal was filed on November 18, 2013, within the fifteen-day period provided by rule 26.3. TEX. R. APP. P. 26.3(a). Therefore, we directed appellant to file a motion to extend time to file his notice of appeal setting forth a reasonable explanation for the need of

the extension. In response, appellant filed a motion explaining he did not file his notice of appeal within the ninety day deadline because he “undertook to determine whether appellant should appeal . . . and whether the decision to appeal made economic sense for appellant.” Appellee did not file a response to the motion.

The Texas Supreme Court has defined “reasonable explanation” to mean any plausible statement of circumstance indicating that failure to file within the required period was not deliberate or intentional, but was the result of inadvertence, mistake, or mischance. *Garcia v. Kastner Farms, Inc.*, 774 S.W.3d 668, 669 (Tex. 1989). The supreme court emphasized that “any conduct short of deliberate or intentional noncompliance qualifies as inadvertence, mistake, or mischance.” *Id.*

Texas courts have rejected as unreasonable explanations that show an appellant’s conscious or strategic decision to wait to file a notice of appeal, reasoning the explanations do not show inadvertence, mistake, or mischance. *See, e.g., Hykonnen v. Baker Hughes Bus. Support Serv.*, 93 S.W.3d 562, 563-64 (Tex. App.—Houston [14<sup>th</sup> Dist.], 2002, no pet.) (failed to file notice of appeal until he found attorney to represent him on appeal at little or no cost); *Weik v. Second Baptist Church of Houston*, 988 S.W.2d. 437, 439 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1999, pet. denied). (appellant did not file notice of appeal because lawyer told him that if he appealed the case while trial court still had authority to reinstate, appellant would have a difficult time prosecuting his claim because of trial court’s displeasure). And, this Court has likewise rejected as unreasonable an appellant’s explanation when appellant made a conscious decision to ignore the appellate timetable in favor of the trial court’s jurisdictional timetable. *See Crossland v. Crossland*, No. 05-06099228-CV, 2006 WL 925032 (Tex. App.—Dallas Apr. 11, 2006, no pet.)(Mem. Op.).

Because appellant's explanation in this case shows he was aware of the deadline for filing his notice of appeal, but consciously ignored the deadline while making a determination about whether to file an appeal, we conclude appellant has not provided a reasonable explanation for the need for an extension. We deny appellant's motion to extend time to file his notice of appeal.

Without a timely filed notice of appeal, this Court lacks jurisdiction. TEX. R. APP. P. 25.1(b). Accordingly, we dismiss this appeal for lack of jurisdiction.

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/Carolyn Wright/  
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CAROLYN WRIGHT  
CHIEF JUSTICE



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

JAMES POLK, Appellant

No. 05-13-01731-CV      V.

DALLAS COUNTY, TEXAS, Appellee

On Appeal from the 134th Judicial District  
Court, Dallas County, Texas  
Trial Court Cause No. DC-10-03558.  
Opinion delivered by Chief Justice Wright.  
Justices Lang-Miers and Brown  
participating.

In accordance with this Court's opinion of this date, this appeal is **DISMISSED**.

It is **ORDERED** that appellee DALLAS COUNTY, TEXAS recover its costs of this  
appeal from appellant JAMES POLK.

Judgment entered March 31, 2014

/Carolyn Wright/

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CAROLYN WRIGHT  
CHIEF JUSTICE