

Opinion filed March 9, 2017



In The
Eleventh Court of Appeals

No. 11-17-00024-CV

YVONNE DE BIVAR BRANCO, Appellant

V.

JOSE FRANCISCO DE BIVAR BRANCO, Appellee

**On Appeal from the 161st District Court
Ector County, Texas
Trial Court Cause No. B-140432**

MEMORANDUM OPINION

On January 30, 2017, Yvonne de Bivar Branco filed a notice of appeal from the trial court's refusal to entertain a motion for final judgment. In her notice of appeal, Yvonne also indicated that she wished to prematurely appeal the summary judgment signed on November 22, 2016, in favor of Jose Francisco de Bivar Branco. We dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a).

Upon docketing this appeal, the clerk of this court wrote the parties and informed them that the notice of appeal appeared to be untimely as the trial court

had signed the orders in which it granted summary judgment and nonsuit on November 22, 2016. We requested that Appellant respond and show grounds to continue the appeal.

Appellant filed a response in which she urges that the notice of appeal was timely with respect to the trial court's refusal to entertain her postjudgment motions and that the trial court's November 22 orders did not dispose of all claims and were not final and appealable. We disagree.

A summary judgment is final for purposes of appeal "if and only if either it actually disposes of all claims and parties then before the court, regardless of its language, or it states with unmistakable clarity that it is a final judgment." *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 192 (Tex. 2001). Although the order granting partial summary judgment was not itself a final judgment and contained no language to indicate that it was intended to be a final judgment, it disposed of all of Appellant's claims. The trial court ruled that Appellant shall "take nothing" against Appellee "on all causes of action associated with her petition to Domesticated Foreign Judgment and all amended petitions seeking to enforce the March 26, 1991, judgment for debt granted by summary judgment in South Africa."

The remaining claims, those filed by Appellee against Appellant, were disposed of by nonsuit. On November 10, 2016, Appellee filed a motion for nonsuit as to "all counter-claims" against Appellant, including Appellee's request for attorney's fees as sanctions and costs of litigation. On November 22, the trial court entered an order by which it granted Appellee's motion for nonsuit. We conclude that the partial summary judgment in combination with the nonsuit actually disposed of all parties and all claims and, together, constituted a final and appealable judgment. *See H. B. Zachry Co. v. Thibodeaux*, 364 S.W.2d 192, 193 (Tex. 1963) (one final judgment existed because interlocutory order that disposed of one defendant became final when a subsequent order dismissed remaining defendant).

Additionally, the trial court's refusal to entertain a postjudgment motion is not itself appealable. *See Guajardo v. Conwell*, 46 S.W.3d 862, 863–64 (Tex. 2001) (determining that trial court's dismissal of postjudgment motion was not an appealable order). Appellant's argument is based on her contention that the trial court had a ministerial duty to enforce the domesticated foreign judgment, which she asserts was final and no longer subject to challenge. Regardless, the trial court's refusal to act on Appellant's motions does not constitute an appealable judgment. We hold that the time period for Appellant to perfect an appeal or file a motion for new trial began to run on November 22, 2016.

The clerk's record reflects that Appellant did not file a motion for new trial but that she did file two postjudgment motions on January 17, 2017, fifty-six days after the date that the trial court signed the order granting partial summary judgment and the order granting nonsuit. Thus, even if either of Appellant's postjudgment motions could be considered a motion for new trial, neither was filed within the thirty-day time limit. *See* TEX. R. CIV. P. 329b(a). Absent a timely filed motion for new trial, the notice of appeal was due to be filed on December 22, 2016, thirty days after the judgment was signed or, at the very latest, January 6, 2017, with a fifteen-day extension. *See* TEX. R. APP. P. 26.1, 26.3. However, Appellant did not file a notice of appeal until January 30, 2017. Her notice of appeal was, therefore, untimely. Absent a timely notice of appeal, this court is without jurisdiction to consider this appeal. *See Wilkins v. Methodist Health Care Sys.*, 160 S.W.3d 559, 564 (Tex. 2005); *Garza v. Hibernia Nat'l Bank*, 227 S.W.3d 233 (Tex. App.—Houston [1st Dist.] 2007, no pet.); *see also Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997).

Because the trial court's refusal to entertain Appellant's postjudgment motions is not itself appealable and because Appellant did not timely file a notice of

appeal based upon the November 22 final-judgment date, we have no jurisdiction to entertain this appeal.

Accordingly, we dismiss this appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a).

PER CURIAM

March 9, 2017

Panel consists of: Wright, C.J.,
Willson, J., and Bailey, J.