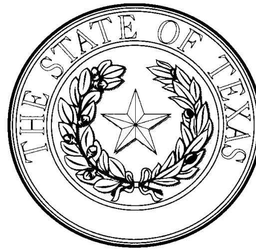
Opinion issued December 1, 2016



In The

Court of Appeals

For The

First District of Texas

NO. 01-15-00065-CV

MERIA JAMES BRADLEY, Appellant

V.

ROBERT F. AUTHUR, Appellee

On Appeal from the 80th District Court
Harris County, Texas
Trial Court Case No. 2011-57020

MEMORANDUM OPINION

In September 2011, Meria James Bradley, proceeding pro se, sued Robert Authur, the record owner of a lot adjacent to Bradley's home. Bradley's suit seeks

adverse possession of the lot pursuant to sections 16.021, 16.026, and 16.030 of the Texas Civil Practice and Remedies Code. TEX. CIV. PRAC. & REM. CODE ANN. §§ 16.021, 16.026, 16.030 (West. 2002). Bradley's petition recites that Authur is a Massachusetts resident and contains Authur's Massachusetts address. That information also appears on the Harris County tax rolls, which show Authur had paid all outstanding taxes due at the time the petition was filed.

In November 2011, New Faith Baptist Church, N.E., appeared in the lawsuit and declared itself a necessary unnamed party. The church answered Bradley's suit and brought a counterclaim against him for trespass to try title, asserting that the church had acquired adverse possession of the lot by using it for a parking lot for over 25 years. The church also sought injunctive relief from the court to require Bradley to remove his vehicles from the lot and prevent him from parking there in the future.

In October 2014, the church, this time joined by its pastor, Michael Mathis, reasserted its adverse possession claim in a petition in intervention. Bradley filed an opposition to the intervention and sought a default judgment.

The trial court held a bench trial in December 2014. When neither party moved for judgment, the trial court sent the parties a notice of intent to dismiss for want of prosecution. Bradley responded with an objection that noted his payment

for citation and specifically addressed his efforts to bring Authur into the lawsuit. The church and its pastor tendered a proposed judgment declaring that the trial court decided the case for the intervenors and ordering that Bradley take nothing.

The trial court signed the proposed judgment two days after Bradley's opposition was filed. The judgment recites that Bradley and the intervenors appeared and announced ready for trial, that they submitted all issues in controversy to the court, and that the judgment disposes of all parties and claims and is appealable. The judgment does not, however, dismiss any claim for want of prosecution, nor does it contain any language addressing Bradley's suit against Authur. Bradley's notice of appeal reiterates the citation issues he raised in his objection to the notice of intent to dismiss.

This Court generally has jurisdiction only over appeals from final judgments unless a statute authorizes an interlocutory appeal. *See CMH Homes v. Perez*, 340 S.W.3d 444, 447–48 (Tex. 2011). A judgment that expressly disposes of some, but not all, of the defendants is nevertheless final for purposes of appeal if the only remaining defendants have not been served or filed answers and nothing in the record indicates that the plaintiff ever expected to obtain service on the unserved defendants. *See M.O. Dental Lab v. Rape*, 139 S.W.3d 671, 674–75 (Tex. 2004) (per curiam); *Youngstown Sheet & Tube Co. v. Penn*, 363 S.W.2d 230, 232 (Tex.

1962). "In these circumstances the case stands as if there had been a discontinuance as to [the unserved party], and the judgment is to be regarded as final for the purposes of appeal." *Penn*, 363 S.W.2d at 232.

The failure to effect service of process against an unserved defendant, however, does not, by itself, demonstrate a lack of intent to serve that defendant. *In re Sheppard*, 193 S.W.3d 181, 188 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding). In such cases, the Court must determine whether the record evidences an intention to serve the unserved defendant. *See, e.g., In re Minter Elec. Co., Inc.*, 277 S.W.3d 540, 544 (Tex. App.—Dallas 2009, orig. proceeding) (concluding record demonstrated intention to serve unserved defendant where petition recited where defendant could be served, citation was paid for and issued for him, case had been pending less than a year, plaintiffs continued to include defendant in pleadings, and trial court struck through word "final" in heading of judgment).

Bradley informed the trial court of his continuing interest in prosecuting his claim against Authur and his frustration in procuring service on Authur immediately before and after the trial court signed the judgment, yet the judgment is silent concerning Bradley's suit against Authur. Upon an examination of the entire record, we hold that the trial court's judgment does not dispose of Bradley's suit against Authur as the record owner of the property; thus, the judgment is not final for

purposes of appeal. Nor is an interlocutory appeal authorized by statute. Accordingly, we dismiss the appeal for want of jurisdiction. All pending motions are dismissed as moot.

Jane Bland
Justice

Panel consists of Justices Bland, Massengale, and Lloyd.