Dismissed and Memorandum Opinion filed April 20, 2010.

In The

Fourteenth Court of Appeals

NO. 14-09-00423-CV

LINDA FRANK, Appellant

V.

BRITTANY SQUARE APARTMENTS, Appellee

On Appeal from the County Court at Law No. 4
Fort Bend County, Texas
Trial Court Cause No. 08-CCV-038247

MEMORANDUM OPINION

This appeal arises from a forcible detainer action. The justice court ruled in favor of the landlord, Brittany Square Apartments, and tenant Linda Frank appealed to the county court at law for a de novo trial on the merits. *See* TEX. R. CIV. P. 749. In the county court, Brittany Square filed a sworn motion in which it represented that Frank failed to make rental payments into the registry of the court. *See* TEX. R. CIV. P. 749b (permitting a residential tenant who makes such payments to "stay in possession of the

premises during the pendency of the appeal"). On April 27, 2009, the county court granted the motion and signed an order requiring Frank and all occupants to vacate the premises by May 4, 2009. The court further provided that a writ of possession would issue in the event of noncompliance. Frank immediately filed this appeal.[1]

This court has appellate jurisdiction only over final judgments and certain nonfinal orders for which an interlocutory appeal is statutorily authorized. The county court's determination that a tenant has not complied with Rule 749b is neither a final judgment nor an appealable interlocutory order. *Cf.* TEX. PROP. CODE ANN. § 24.007 (Vernon 2000) (addressing appeal of a county court's "final judgment" in a residential eviction suit). By its terms, Rule 749b addresses only entitlement to possess the premises "during the pendency of the appeal" in the county court; it is not dispositive of that appeal itself. *See id.*; *see also Kennedy v. Highland Hills Apartments*, 905 S.W.2d 325, 327 (Tex. App.—Dallas 1995, no writ) (holding that county court erred in entering a default judgment on the merits based on tenant's failure to make timely rental payments into the court's registry in accordance with Rule 749b). Consequently, a county court's order granting the landlord possession of the premises pursuant to Rule 749b is not a final order. *Simmons v. Hollyview Apartments*, No. 01-08-00231-CV, 2009 WL 30508325, at *2 (Tex. App.—Houston [1st Dist.] Sept. 24, 2009, pet. filed) (mem. op.).

We provided the parties with notice of our intent to dismiss the appeal in this court based on the absence of an appealable order. *See* TEX. R. APP. P. 42.3(a) (permitting an appellate court to dismiss the case on its own motion upon ten days' notice to the parties). Frank responded to the notice by producing an additional copy of the county court's April 27, 2009 order and an unofficial copy of the writ of possession to which it refers. Because

[1] She also filed a petition for writ of mandamus, which we denied. *In re Linda Frank*, No. 14-09-00438-CV, 2009 WL 1333325 (Tex. App.—Houston [14th Dist.] May 14, 2009, orig. proceeding).

the latter document is neither part of the record nor suggestive of an adjudication on the merits, we dismiss the case for want of jurisdiction.

/s/ Adele Hedges
Chief Justice

Panel consists of Chief Justice Hedges and Justices Anderson and Boyce.