

Motion Granted; Appeal Dismissed and Memorandum Opinion filed May 27, 2010.



In The

Fourteenth Court of Appeals

NO. 14-09-00879-CV

A-AFFORDABLE INSURANCE AGENCY, INC., Appellant

V.

AEA INSURANCE AGENCY, INC., Appellee

**On Appeal from the 10th District Court
Galveston County, Texas
Trial Court Cause No. 06CV0941A**

MEMORANDUM OPINION

This appeal is from a judgment signed September 9, 2009. Appellee filed a motion to dismiss the appeal for want of jurisdiction. Appellant has responded and appellee subsequently filed a reply. For the reasons set forth below, we grant the motion and dismiss the appeal.

The record reflects the trial court granted partial summary judgment in favor of appellee on August 25, 2008. On September 9, 2009, the trial court granted appellant's motion to sever and entered an order "that the Court's Partial Summary Judgment entered

on August 25, 2008 construing the words “agency fees” in the contract and [appellant’s] Motion to Reconsider that ruling are hereby severed from [appellee’s] remaining claims against [appellant]. . .”

Generally, an erroneous order of severance is reversible but does not necessarily deprive this court of jurisdiction to consider the appeal. *See Jones v. American Flood Research, Inc.*, 153 S.W.3d 722 (Tex. App. – Dallas 2005), *rev’d on other grounds*, 192 S.W.3d 581 (Tex. 2006). This is only true, however, if there has been a final judgment. *Id.* at 722 (citing *Pierce v. Reynolds*, 160 Tex. 198, 329 S.W.2d 76 (1959) (“The court concluded that a *final judgment* in a severed action was appealable even if the severance was improper.”) (emphasis added)).

A judgment becomes final upon severance if it disposes of all the claims and/or parties addressed in the judgment. *See Panatrol Corp. v. Emerson Elec. Co.*, 147 S.W.3d 518, 521 (Tex. App. – San Antonio 2004, no pet.) (“Generally, an otherwise interlocutory *summary judgment* becomes final when the trial court signs an order severing into a separate cause of action *the parties and claims addressed in the judgment.*”) (emphasis added); *Thompson v. Beyer*, 91 S.W.3d 902, 904 (Tex. App. – Dallas 2002, no pet.) (“As a rule, severance of an interlocutory judgment into a severed action makes it final if *all claims* in the severed action have been disposed of, unless the order of severance indicates further proceedings are to be had in the severed action.”) (emphasis added); and *Tanner v. Karnavas*, 86 S.W.3d 737, 743 (Tex. App. – Dallas 2002, pet. denied) (“As a rule, severance of an interlocutory *judgment* into a separate action makes it final.”) (emphasis added). The trial court’s order of August 25th 2008 only defines the term “agency fees.” It does not dispose of any claims, causes of actions, or parties, and does not deny or grant any relief. Further, the trial court’s severance order only severs construction of the term “agency fees” and appellant’s motion to reconsider, no claims or parties were severed from the main action.

Moreover, although it is not expressly stated in the order, it is clear that further proceedings must be had in the severed action. Even if appellant prevails and we agree

with the trial court, the judgment of August 25th 2008 does not dispose of the claims dependent upon the definition of “agency fees.” If, however, appellee prevails and we disagree with the trial court’s construction of the term “agency fees,” the trial court’s August 25th 2008 would be reversed and the case remanded for further proceedings. Neither scenario results in the disposition of a claim or a party. The trial court severed a definition, not a judgment, and a severance cannot make an order final and appealable that is otherwise interlocutory.

Accordingly, the appeal is ordered dismissed.

PER CURIAM

Panel consists of Justices Brown, Sullivan, and Christopher.