

Petition for Writ of Mandamus Denied and Memorandum Opinion filed November 18, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-01111-CV

RSL FUNDING, LLC and RAPID SETTLEMENTS, LTD., Relators

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS**

MEMORANDUM OPINION

On November 12, 2010, relators RSL Funding, LLC and Rapid Settlements, Ltd. filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code § 22.221; *see also* Tex. R. App. P. 52. Relators assert that the trial court lacks jurisdiction and ask this court to direct the respondent, the Honorable Patricia Hancock, presiding judge of the 113th District Court of Harris County, to vacate all orders and settings in cause number 2006-23366. They also request that we direct the respondent to grant Rapid Settlements, Ltd.'s motion to strike the First Supplemental Petition and Application for Temporary Restraining Order and Temporary and Permanent Injunction filed by the real party in interest, Settlement Funding, LLC d/b/a Peachtree Settlement Funding,

Mandamus relief is available only to correct a clear abuse of discretion for which the relator has no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004). Mandamus is appropriate without a showing that an appeal is inadequate if a trial court issues an order beyond its jurisdiction or after its plenary power has expired. *In re Lovito-Nelson*, 278 S.W.3d 773, 776 (Tex. 2009); *In re Sw. Bell Tel. Co.*, 35 S.W.3d 602, 605 (Tex. 2000).

Relators assert that the trial court signed a final judgment in this case on April 7, 2010, and that the court's plenary power expired on July 22, 2010. Therefore, they assert that all subsequent trial court actions are void. *See State ex rel. Latty v. Owens*, 907 S.W.2d 484, 486 (Tex. 1995).

Determining finality here involves the interplay of three suits referred to as the King action, the Franklin action, and the Maxwell action. These three suits were consolidated into trial court cause number 2006-23366.

The trial court granted summary judgment in the Maxwell action in an order signed on May 12, 2009. An order severing the Maxwell action was signed on June 9, 2009; the severed Maxwell action became cause number 2006-23366-A. The summary judgment in the severed Maxwell action was appealed to this court, which affirmed the judgment in part and reversed and remanded in part. *See Rapid Settlements, Ltd. v. Settlement Funding, LLC*, No. 14-09-00637-CV, 2010 WL 3504182 (Tex. App.—Houston [14th Dist.] Sept. 9, 2010, no pet. h.). Because unadjudicated claims remained pending in the consolidated King and Franklin actions, the June 2009 order severing the Maxwell action did not create a final and appealable judgment in those actions.

On April 7, 2010, the trial court signed an order granting summary judgment in the King action. The April 7, 2010 summary judgment order does not expressly refer to the Franklin action. On August 13, 2010, amended pleadings were filed adding new claims in the still-consolidated King and Franklin actions. Rapid moved to strike the petition, claiming the court no longer had plenary power because the April 7, 2010 summary

judgment order was final and appealable. On September 13, 2010, the court denied the motion and ruled that no final judgment had been signed resolving all claims at to all parties in the still-consolidated King and Franklin actions.

The April 7, 2010 summary judgment order begins by identifying the specific summary judgment motion being considered, which was filed by Peachtree Settlement Funding and King. The order also states that the court is granting the motion in favor of Peachtree and King; the order does not refer to the consolidated Franklin action. The April 7, 2010 order states as follows:

This Court, having considered Plaintiff Settlement Funding, LLC d/b/a Peachtree Settlement Funding and Plaintiff Simmie Bernard King's First Amended Traditional Motion for Summary Judgment against Defendant Rapid Settlements, Ltd. ("Rapid"), the response thereto, the summary judgment evidence, the arguments of counsel, if any, and the vexatious and intertwined nature of Rapid's conduct during the course of litigation, is of the opinion that Summary Judgment should be granted in favor of Plaintiffs Settlement Funding, LLC d/b/a Peachtree Settlement Funding ("Peachtree") and Plaintiff Simmie Bernard King (collectively "Plaintiffs").

Thus, the court limited its ruling to the claims in the King action. The order concludes by stating: "This Final Judgment disposes of all parties and all claims and is final."

The judgment is not final merely because it states that it is final; it must actually dispose of all parties and claims or demonstrate an unequivocal intent to dispose of all parties and claims. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 205 (Tex. 2001). The April 7, 2010 summary judgment order does not demonstrate an unequivocal intent to dispose of all parties and claims.

The April 7, 2010 summary judgment order limited its ruling to the specific summary judgment motion identified in the order. The summary judgment motion being decided in that order did not expressly reference the claims in the consolidated Franklin action. Therefore, the judgment does not dispose of all parties and claims or demonstrate a clear intent to do so. These facts distinguish this case from *In re Deredia*, 317 S.W.3d 247, 248-49 (Tex. 2010) (per curiam), in which a default judgment was determined to be

final based on unequivocal finality language in the order. Additionally, we may review the record in making our determination as to the finality of the judgment. *See Lehmann*, 39 S.W.3d at 205-06. If the record reveals the presence of other parties or claims not mentioned in the order, the order is not final. *Id.* at 206.

A review of the record shows that the Franklin claims were not addressed in the summary judgment motion. The court's docket states: "Order for Interlocutory Summary Judgment signed." In its order denying the real party's motion to strike the amended pleadings, the court specifically ruled that no final judgment has been entered. The court directed the King claims that were the subject of the April 7, 2010 summary judgment should be severed. The April 7, 2010 King judgment has now been severed into a separate case, 2006-23366-B.

We conclude that the April 7, 2010 summary judgment order was not final and appealable, and that the trial court retained jurisdiction over the case. Because we conclude that the trial court retained jurisdiction to act after the April 7, 2010 interlocutory summary judgment order was signed, we deny relators' petition for writ of mandamus.

PER CURIAM

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