Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00813-CV

HOUSING AUTHORITY OF THE CITY OF ALICE,
Appellant

v.

TEXAS MUNICIPAL LEAGUE JOINT SELF-INSURANCE FUND
a/k/a Texas Municipal League Intergovernmental Risk Pool,
Appellee

From the 79th Judicial District Court, Jim Wells County, Texas
Trial Court No. 15-03-54404-CV
Honorable Oscar J. Hale Jr., Judge Presiding[1]

Opinion by: Patricia O. Alvarez, Justice

Sitting: Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: March 29, 2017

DISMISSED FOR WANT OF JURISDICTION

In a dispute over the amount owed for storm damage to its properties, the insured, Appellant Housing Authority of the City of Alice, sued its insurer, Appellee Texas Municipal League Joint Self-Insurance Fund. After substantial discovery, the trial court asked the parties to submit motions for partial summary judgment on the question of whether the Authority has a right

[1] The Honorable Richard C. Terrell is the presiding judge of the 79th Judicial District Court, Jim Wells County, Texas. The Honorable Oscar J. Hale Jr., presiding judge of the 406th Judicial District Court, Webb County, Texas, sat by assignment in this cause.

to an appraisal. The trial court granted the Fund's motion for partial summary judgment, and the Authority appealed. Because the order granting the Fund's motion for partial summary judgment was not a final, appealable order, we dismiss this appeal for want of jurisdiction.

BACKGROUND

The Housing Authority of the City of Alice owns more than 120 properties, primarily dwellings, in the City of Alice.

A. Insurance Policy[2]

In 2013, the Authority purchased an insurance policy from the Fund to insure against "the risk of direct physical loss of or damage to [the Authority's] property." In case of a loss, the policy's Property Coverage Document, General Conditions, paragraph IV.D indicates the Authority is to "render a signed and sworn proof of loss to the Fund . . . within 60 days." If the Authority and the Fund disagree on the amount of loss, paragraph IV.E establishes an appraisal process to determine the amount of loss.

B. Storm, Damage Reports, Disputed Proof of Loss

On May 27, 2014, a storm damaged approximately 120 of the Authority's properties. The next day, the Authority reported the damage to the Fund by a telephone call. Two days after the storm, the Authority sent a signed, written report of loss to the Fund by facsimile.

The Fund retained an independent adjuster who inspected the Authority's properties and reported his findings. Based on the findings, the Fund determined the Authority's reimbursable amount of loss, less the applicable deductible, was $429,143.72. The Fund tendered payment to the Authority by check; with the check, the Fund sent its proposed proof of loss for the Authority to sign.

[2] We briefly refer to excerpts from the policy to provide context. Because we lack appellate jurisdiction, we do not reach the merits of this matter, e.g., the trial court's construction of the policy.

The Authority did not sign the Fund's proposed proof of loss. Instead, the Authority disputed the proposed amount of loss and asserted its actual losses exceeded $3 million. To support its claim, the Authority took steps to invoke the appraisal process described in the policy.[3]

C. Authority's Suit, Trial Court's Request

When the Fund resisted invoking the appraisal process, the Authority sued the Fund for breach of contract. The Authority alleged the Fund failed to pay the amount of loss the Authority claims it is entitled to based on the Authority's appraisal. In turn, the Fund asserted the Authority had no right to invoke the appraisal process. The Fund argued a timely-filed, sworn proof of loss is an appraisal process prerequisite, and the Authority did not timely submit a compliant sworn proof of loss.

The parties argued their positions on the Authority's right to an appraisal to the trial court. The trial court opined that "I think the issue I'm hearing is whether or not there's a right to an appraisal. . . . I'd like to get the briefing on that and make a ruling and then we'll go from there." The court reiterated that it would "make a ruling on that and then we'll see where we need to go from there."

D. Motions for Summary Judgment, Trial Court's Order

At the trial court's request, the Authority and the Fund submitted their respective motions for summary judgment. The Authority moved for complete summary judgment on its breach of contract claim. The Fund moved for partial summary judgment on the question of whether the Authority has a right to an appraisal. The trial court denied the Authority's motion and granted the Fund's motion.

[3] Some of the Authority's actions to invoke the appraisal process were previously addressed by this court. *See Tex. Mun. League Joint Self-insurance Fund v. Hous. Auth. of the City of Alice*, No. 04-15-00069-CV, 2015 WL 5964182, at *1–2 (Tex. App.—San Antonio Oct. 14, 2015, no pet.) (mem. op.). In that appeal, we vacated the trial court's order appointing an appraisal umpire, and we dismissed the appeal.

E. Authority's Appeal, Appellate Jurisdiction

The Authority timely filed a notice of appeal, but we questioned the finality of the trial court's order. The Authority responded, and based on its response, our preliminary review allowed the appeal to proceed. The parties filed their briefs on the merits, and we set this appeal at issue. Now, having had additional time to review the voluminous record, we revisit the question of our appellate jurisdiction.

APPLICABLE LAW

Generally, unless a statute authorizes an interlocutory appeal, "an appeal may be taken only from a final judgment." *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). We determine "whether a judicial decree is a final judgment . . . from its language and the record in the case." *Id.*

"A summary judgment, unlike a judgment signed after a trial on the merits, is presumed to dispose of only those issues expressly presented, not all issues in the case." *City of Beaumont v. Guillory*, 751 S.W.2d 491, 492 (Tex. 1988) (per curiam); *Mikulich v. Perez*, 915 S.W.2d 88, 90 (Tex. App.—San Antonio 1996, no writ). A trial court's order granting a motion for 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 as to all claims and all parties." *Lehmann*, 39 S.W.3d at 192–93; *accord Farm Bureau Cty. Mut. Ins. Co. v. Rogers*, 455 S.W.3d 161, 163 (Tex. 2015).

Even if no party asserts that "the summary judgment was not a final, appealable order, . . . we are obligated to review *sua sponte* issues affecting jurisdiction." *M.O. Dental Lab v. Rape*, 139 S.W.3d 671, 673 (Tex. 2004); *accord Castle & Cooke Mortg., LLC v. Diamond T Ranch Dev., Inc.*, 330 S.W.3d 684, 687 (Tex. App.—San Antonio 2010, no pet.) ("We have an independent duty to determine *sua sponte* whether we have the authority to hear an appeal . . . .").

"For an order or judgment to be final, there must be some 'clear indication that the trial court intended the order to completely dispose of the entire case.'" *Castle & Cooke Mortg.*, 330 S.W.3d at 688 (quoting *Lehmann*, 39 S.W.3d at 205). If the order does not indicate the court's intent to dispose of the entire case, and there is no other order (e.g., severance) or circumstance (e.g., nonsuit, settlement) that makes the order final, we have no choice but to dismiss the appeal. *See Guillory*, 751 S.W.2d at 492; *Castle & Cooke Mortg.*, 330 S.W.3d at 691.

ANALYSIS

A. Preliminary, Subsequent Reviews of Appellate Jurisdiction

In our preliminary review of the record, because the summary judgment order did not appear to be final, we ordered the Authority to show cause why the order was a final, appealable order. *See Lehmann*, 39 S.W.3d at 195; *Guillory*, 751 S.W.2d at 492.

In its response, the Authority emphasized that the case involved only two parties, one cause of action, and the trial court's order inescapably disposed of its breach of contract claim and the entire case. The Fund did not reply to challenge our appellate jurisdiction, and based on our preliminary, limited review, we allowed the appeal to proceed.

The parties submitted their briefs, and we set the appeal at issue. On submission, having had additional time to examine a record exceeding 3,500 pages, we now reconsider the question of our appellate jurisdiction. *See M.O. Dental*, 139 S.W.3d at 673; *Castle & Cooke Mortg.*, 330 S.W.3d at 687.

B. Parties, Claims in the Case

The record establishes that there are only two parties: the Authority and the Fund. There is only one claim: the Authority's breach of contract claim against the Fund. The Authority's second amended petition claims the Authority's amount of loss was approximately $3.351M, and the Fund failed to pay the full amount of the Authority's claimed loss. The parties presented their

arguments to the trial court, and it asked the parties to submit motions for partial summary judgment on the question of the Authority's right to an appraisal. The Authority's motion moved for complete summary judgment on its breach of contract claim. The Fund's motion moved only for partial summary judgment.

C. Fund's Motion for Partial Summary Judgment

The Fund moved for partial summary judgment on the question of the Authority's right to an appraisal; it stated two grounds:

> 1. The Authority did not satisfy the condition precedent to invoke the appraisal process, because it did not timely file a compliant sworn proof of loss; and
> 2. Having chosen to invoke the objection process in the parties' agreement, the Authority is bound by the adverse "final and binding" decision by the [Fund's] Risk Pool Board, that the Authority has no appraisal right.

We note that the Fund's motion did not ask the trial court to decide, inter alia, that the Authority breached the contract, that the Fund's proposed proof of loss was correct, that the payment the Fund tendered to the Authority was payment in full under the policy, or that the Fund was entitled to judgment as a matter of law.

D. Trial Court's Order

After it considered the parties' motions, the trial court denied the Authority's motion for complete summary judgment and granted the Fund's motion for partial summary judgment. The trial court's order granting the Fund's motion reads in its entirety as follows:

> On this day, the Court, having considered The Texas Municipal League Joint Self-Insurance Fund's Motion for Partial Summary Judgment Regarding Why the Authority Has No Appraisal Right, the Plaintiff's response, any timely-filed reply, the supporting evidence, objections to same, any arguments of counsel and the applicable law, has determined that The Texas Municipal League Joint Self-Insurance Fund's Motion for Partial Summary Judgment Regarding Why the Authority Has No Appraisal Right should be GRANTED. It is therefore
>
> ORDERED that Plaintiff has no right to an appraisal pursuant to the terms of the Interlocal Agreement and Property Coverage Document.

E. Authority's Proposed Amended Order

After the trial court signed the order, the Authority moved the trial court to "add language to its Order making clear the result of the Court's Order Granting Partial Summary Judgment." The Authority proposed an amended order that includes the sentence "This judgment finally disposes of all parties and all claims and is appealable."

The Fund opposed the proposed amended order. The Fund argued that, inter alia, the proposed amended order would grant the Fund more relief than its motion requested because the Fund moved only for partial summary judgment on the issue of the Authority's right to an appraisal, not for a final judgment disposing of the entire case.

The trial court did not sign the Authority's proposed amended order.

F. Order was Interlocutory

We conclude the trial court's order grants only a partial summary judgment and does not dispose of the entire case. *See Lehmann*, 39 S.W.3d at 192–93; *Castle & Cooke Mortg.*, 330 S.W.3d at 687–88. The plain language of the trial court's order, confirmed by the record, makes it clear that the order decided only the issue of whether the Authority has a right to an appraisal process under paragraph IV.E; it did not dispose of the entire case. *See Lehmann*, 39 S.W.3d at 192–93; *Castle & Cooke Mortg.*, 330 S.W.3d at 687–88. Because there was no other order or circumstance to make the order granting the motion for partial summary judgment final, the order was interlocutory. *See Guillory*, 751 S.W.2d at 492; *Castle & Cooke Mortg.*, 330 S.W.3d at 691. Without a final, appealable order in this case, we lack appellate jurisdiction over this appeal. *See Lehmann*, 39 S.W.3d at 195.

CONCLUSION

Having reviewed the complained of order and the appellate record, we conclude that when the trial court granted the Fund's motion for partial summary judgment, the trial court decided

only that the Authority has no right to an appraisal. We express no opinion on the merits underlying the trial court's decision, but we necessarily conclude that the order granting the Fund's motion, as confirmed by the record in the case, does not contain a clear indication that the trial court intended its order to dispose of the entire case. Thus, because there is no other order or circumstance that makes the order final, the order is interlocutory, and we lack appellate jurisdiction in this appeal. Accordingly, we dismiss this appeal for want of jurisdiction.

Patricia O. Alvarez, Justice