

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00156-CV

JUSTIN DEAN MATTHEWS, Appellant

V.

COTI LYNN MATTHEWS, Appellee

On Appeal from the 356th District Court
Hardin County, Texas
Trial Cause No. 50,221

MEMORANDUM OPINION

The trial court signed an agreed decree of divorce and order in suit affecting the parent-child relationship on December 1, 2009. According to the record, Justin Dean Matthews died later that day. On December 28, 2009, Coti Lynn Matthews filed a motion to vacate the decree and to grant a new trial. The trial court granted the motion for new trial on February 10, 2010, and Justin appealed.¹ We questioned our jurisdiction over the appeal. No response has been filed.

¹ Justin's counsel of record signed the notice of appeal. The record does not indicate that a representative for the estate has been appointed.

An order granting a motion for new trial is an interlocutory order that is appealable only upon entry of a final judgment. *See In re Columbia Med. Ctr. of Las Colinas*, 290 S.W.3d 204, 212-13 (Tex. 2009). In the absence of the entry of a final order in the case, relief from an abuse of the trial court’s discretion must be sought through mandamus. *Id.*

In this case, the trial court granted a new trial while it retained plenary power over the case. *See* TEX. R. CIV. P. 329b(e); *see also Dunn v. Dunn*, 439 S.W.2d 830, 834 (Tex. 1969) (A divorce case does not become moot where the “the property rights of the parties would be significantly affected depending upon whether the marriage was held to have been terminated by divorce decree or by death.”). The trial court’s order of February 10, 2010, is not a final order. Accordingly, we dismiss the appeal without reference to the merits.

APPEAL DISMISSED.

STEVE McKEITHEN
Chief Justice

Opinion Delivered May 20, 2010
Before McKeithen, C.J., Gaultney and Horton, JJ.