

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00174-CV

WILL BRINSON FERGUSON, Appellant

V.

DAVID WALKER, COUNTY ATTORNEY, Appellee

**On Appeal from the 284th District Court
Montgomery County, Texas
Trial Cause No. 07-03-02733-CV**

MEMORANDUM OPINION

In this appeal, we determine that the trial court correctly determined that it lacked plenary power to proceed. We further determine that the appellant has not filed a timely notice of appeal from an appealable order. Accordingly, we dismiss the appeal for want of jurisdiction.

The trial court signed an order denying a petition for writ of habeas corpus in Cause No. 07-03-02733-CV on March 26, 2007. Will Brinson Ferguson filed new pleadings in the case on December 3, 2007, and named as parties Attorney General Greg Abbott and Montgomery County Attorney David K. Walker. On April 11, 2008, and

April 14, 2008, the trial court granted pleas to the jurisdiction filed by Attorney General Abbott and County Attorney Walker. On June 23, 2008, Ferguson filed two additional pleadings in Cause No. 07-03-02733-CV. According to Ferguson, “[o]ne demands that public records be released to my hand and the other demands that an Information be file[d] with a Grand Jury within Montgomery County[,] Texas.”¹ On March 3, 2010, the trial court signed an order that canceled a trial scheduled for April 9, 2010, quashed subpoenas issued at Ferguson’s request for the appearance of witnesses on April 9, 2010, and ordered Ferguson to cease filing documents in Cause No. 07-03-02733-CV. Ferguson filed notice of appeal from the order of March 3, 2010.

Ferguson contends that Article 44.02, Texas Code of Criminal Procedure, authorizes this appeal. *See* TEX. CODE CRIM. PROC. ANN. art. 44.02 (Vernon 2006). Appeal may be taken pursuant to article 44.02 only where an appeal of a criminal case is authorized under another provision of law. *Abbott v. State*, 271 S.W.3d 694, 696-97 (Tex. Crim. App. 2008). Likewise, the appeal in a civil case must be taken in a timely manner from a final judgment or from certain interlocutory and post-judgment enforcement orders for which appeal has been expressly authorized. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001); *Allen v. Allen*, 717 S.W.2d 311, 312 (Tex. 1986); *see also* TEX. CIV. PRAC. & REM. CODE ANN. §§ 51.012, 51.014 (Vernon 2008 & Supp. 2009).

¹ Ferguson contends Walker is not an interested party. It is evident from the mandamus record that the County Attorney holds the records sought by Ferguson.

The order signed by the trial court in this case merely recognizes that it lacks plenary power to proceed in Cause No. 07-03-02733-CV. Such an order is somewhat analogous to an order denying a motion for judgment nunc pro tunc, which is not an appealable order in either criminal or civil cases. *See Ex parte Ybarra*, 149 S.W.3d 147, 148-49 (Tex. Crim. App. 2004); *Shadowbrook Apts. v. Abu-Ahmad*, 783 S.W.2d 210, 211 (Tex. 1990).

Our appellate jurisdiction has not been properly invoked by the timely filing of a notice of appeal from a final judgment or an appealable order. Accordingly, we dismiss the appeal for want of jurisdiction.

APPEAL DISMISSED.

STEVE McKEITHEN
Chief Justice

Opinion Delivered July 22, 2010
Before McKeithen, C.J., Kreger and Horton, JJ.