



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-14-00014-CV

**REBECCA TERRELL AND
CHANDRASHEKHAR THANEDAR, APPELLANTS**

V.

PAMPA INDEPENDENT SCHOOL DISTRICT, APPELLEE

On Appeal from the 223rd District Court
Gray County, Texas
Trial Court No. 35,621, Honorable Abe Lopez, Presiding

October 29, 2015

MEMORANDUM OPINION

Before **CAMPBELL** and **HANCOCK** and **PIRTLE, JJ.**

Appellants, Rebecca Terrell and Chandrashekhari Thanedar, filed notice of appeal of the trial court's take-nothing judgment on claims asserted against appellee, Pampa Independent School District (PISD), on the basis of alleged violations of the Texas Open Meetings Act (TOMA). Concluding that the take-nothing judgment was not final, we will dismiss for want of jurisdiction.

Factual and Procedural Background

As our resolution of the present appeal turns on the procedural history of the case, we will not address the factual history of this case. However, the facts of this case are identified in *Terrell v. Pampa Indep. Sch. Dist.*, 345 S.W.3d 641, 642 (Tex. App.—Amarillo 2011, pet. denied).

After the trial court granted PISD summary judgment, appellants appealed to this Court. Appellants presented “an extensive number of reasons why the trial court’s judgment was in error.” *Id.* This Court classified these issues as follows:

the trial court erred in not finding that PISD violated the provisions of TOMA regarding: 1) posting of notice of meetings, 2) requirements for specificity in the notice of meetings and the place of the meetings, 3) internet posting provisions, 4) requirement that all deliberations of the type involved be held in a public meeting, 5) allegations that the notices posted were not posted by a person with authority to post notices of meetings. In addition to the alleged violations of TOMA, appellants allege that the trial court erred in: 6) ruling on various objections to some of PISD’s summary judgment evidence, 7) in granting PISD’s motion for summary judgment, and 8) in denying appellants’ motion for summary judgment.

Id. at 642-43. However, after identifying each of these issues as having been presented by appellants, we expressly stated that “one of the issues appellants raise regarding violations of TOMA is dispositive of this matter” *Id.* at 643. After discussing this issue, we held that “there is a material fact issue about whether PISD actually attempted to post the notices and, therefore, met the good faith exception to the requirement to concurrently post notices of the School Board meetings on its website.” *Id.* at 644. As such and without addressing any of the other issues raised by appellants, “we reverse[d] the judgment of the trial court [and] remand[ed] this matter for further proceedings consistent with this opinion.” *Id.*

On remand, the case was called for trial to the bench. During the trial, appellants attempted to offer evidence that would support its claims that PISD violated TOMA in ways that were “systematic” and “pervasive.” Specifically, appellants offered evidence of defects in the content of the notices, that the physical notice was not posted in a proper place, and that at least one meeting was improperly closed. In each of these instances, the trial court sustained PISD’s relevancy objections and explained that the only issue before the trial court was the internet postings and whether PISD could establish the good faith exception found in Texas Government Code section 551.056(d). See TEX. GOV’T CODE ANN. § 551.056(d) (West 2012). The trial proceeded with these issues limited to only PISD’s internet postings and whether PISD’s failure to comply with the internet posting requirements was excused due to the good faith exception. At the close of trial, the trial court entered judgment, denominated “Final Judgment,” that ordered that appellants take nothing by their suit, taxed costs against appellants, and awarded \$30,000 to PISD for attorney’s fees. Appellants timely filed a motion for new trial which, *inter alia*, raised the issue that the trial court refused to hear appellants’ other claims that PISD had violated TOMA.¹ Appellants’ motion for new trial was overruled by operation of law.

Applicable Law

Appellate jurisdiction is never presumed; if the record does not affirmatively demonstrate appellate jurisdiction is proper, the appeal must be dismissed. *Brashear v. Victoria Gardens of McKinney, L.L.C.*, 302 S.W.3d 542, 546 (Tex. App.—Dallas 2009,

¹ Subsequently, appellants filed an untimely motion for reconsideration that again raised the issue that the trial court had denied appellants the opportunity to present evidence regarding its live claims that PISD had violated TOMA in ways other than by failing to comply with the internet posting requirements.

no pet.). Generally, unless a statute specifically authorizes an interlocutory appeal, appellate courts have jurisdiction over final judgments only. See *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). A judgment is final for purposes of appeal if it disposes of all pending parties and claims. *Id.*; see *N. E. Indep. Sch. Dist. v. Aldridge*, 400 S.W.2d 893, 895 (Tex. 1966). The absence of an appealable order deprives an appellate court of jurisdiction to consider the appeal. See *Qwest Commc'ns. Corp. v. AT&T Corp.*, 24 S.W.3d 334, 336 (Tex. 2000) (per curiam); *Texaco, Inc. v. Shouse*, 877 S.W.2d 8, 10 (Tex. App.—El Paso 1994, no writ).

Analysis

In the present case, appellants' live pleadings claim that PISD violated TOMA by: (1) failing to post meetings on its internet website; (2) failing to post physical notice on the bulletin board in its Central Administrative Office; (3) not having notices posted for the statutorily required period of 72 hours before meetings; (4) not specifying the place of meetings in its notices; (5) not following the proper process to close the March 26, 2009 meeting; and (6) having notices signed by a person not designated or authorized to sign the notices. While this Court's opinion addressed only the internet posting issue, our conclusion that there was a genuine issue of material fact as to that issue led to our reversal of the trial court's summary judgment in favor of PISD. See *Terrell*, 345 S.W.3d at 642. Because we did not specifically affirm the summary judgment as to any other issue or claim, our remand of the cause sent the entire case back to the trial court as if the summary judgment had never been granted. As such, all of appellants' claims were properly before the trial court. However, the trial that was held on remand only addressed claims relating to PISD's internet posting of notices. This was the case even

though appellants offered evidence regarding some of their other claims. As a result, the judgment issued on remand did not address all claims by all parties and was, therefore, not final for purposes of appeal. See *Lehmann*, 39 S.W.3d at 195; *N. E. Indep. Sch. Dist.*, 400 S.W.2d at 895. As such, appellants are attempting to appeal an interlocutory order and there is no statutory authority cited authorizing such an interlocutory appeal under these circumstances. Consequently, we are without jurisdiction over the instant appeal and must dismiss. See *Qwest Commc'ns. Corp.*, 24 S.W.3d at 336; *Texaco, Inc.*, 877 S.W.2d at 10.

Conclusion

Because we have determined that we lack jurisdiction over this appeal, we must dismiss. See TEX. R. APP. P. 43.2(f); *Brashear*, 302 S.W.3d at 546.

Mackey K. Hancock
Justice