



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

No. 07-15-00388-CV

SCOTT BAKER, APPELLANT

V.

**DENNIS COOK ET UX, CINDY COOK, D/B/A MAKARIOS PROPERTIES
AND NORMA J. WHITTLEY, APPELLEES**

On Appeal from the 223rd District Court
Gray County, Texas
Trial Court No. 36,877; Honorable Phil N. Vanderpool, Presiding

September 19, 2017

MEMORANDUM OPINION

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

Appellant, Scott Baker, appeals the entry of an *Order Granting Defendants' No-Evidence Motion for Summary Judgment and Denying Plaintiff's Motion for Partial Summary Judgment*. Because this order is not a final judgment, we dismiss this appeal for want of jurisdiction.

PROCEDURAL BACKGROUND

In October 2013, Baker filed his *First Amended Petition* alleging that the conduct of Appellees, Dennis Cook and Cindy Cook, d/b/a Makarios Properties, caused him injury. Baker's petition alleged claims against the Cooks for wrongfully and/or illegally conducting a non-judicial foreclosure sale of a residence located in Pampa, Texas, deceptive trade practices,¹ unjust enrichment, conversion, breach of the duty of good faith and fair dealing, and rescission. At the same time, Baker asserted claims against Norma J. Whittley for abandonment and unjust enrichment.

In their *First Amended Original Answer*, the Cooks responded with a general denial and asserted the defense of offset. As Baker's creditors, the Cooks also filed an *Original Counterclaim* seeking to recover principal, interest, and late fees in addition to reasonable attorney's fees and costs allegedly owed as a result of Baker's default on the promissory note secured by the deed of trust Baker alleges the Cooks wrongfully foreclosed. Whittley filed a document entitled *Defendant, Norma J. Whittley's, First Original Answer*, which consisted of special exceptions to Baker's petition and a general denial.

On June 2, 2014, the Cooks filed their *No-Evidence Motion for Summary Judgment* seeking a judgment in their favor declaring that Baker take nothing on his claims against the Cooks and allowing them "to continue to pursue their counter-claim against [Baker]." In response, Baker filed his *Counter-Motion for Partial Summary Judgment* seeking a declaration that the foreclosure sale and resulting trustee's deed were void. Neither summary judgment motion addressed the claims asserted by Baker

¹ See generally TEX. BUS. & COM. CODE ANN. §§ 17.01-17.63 (West 2011 and Supp. 2016).

against Whittle. On October 5, 2015, the trial court granted summary judgment in favor of the Cooks, while at the same time denying Baker's motion for partial summary judgment. Although not plead for in their motion for summary judgment, the order entered by the trial court also granted the Cooks a judgment for the balance allegedly due and owing on the original promissory note, plus the recovery of attorney's fees and costs of court. Three days later, Baker filed his *Notice of Appeal* and the district clerk subsequently forwarded the record to this court.

ANALYSIS

At the outset, we begin with the general principle that "Texas appellate courts have jurisdiction only over *final* orders or judgments unless a statute permits an interlocutory appeal." See *Ogletree v. Matthews*, 262 S.W.3d 316, 319 n.1 (Tex. 2007) (Emphasis added). See also *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). As a general rule, a judgment is final for purposes of appeal if it disposes of all parties and all issues. *Id.* at 205.

Because the jurisdiction of an appellate court is never presumed, *Long v. Cibolo Livery Stables, Inc.*, No. 07-09-00243-CV, 2009 Tex. App. LEXIS 8251, at *7 (Tex. App.—Amarillo Oct. 27, 2009, no pet.), this court is obliged to determine, *sue sponte*, issues affecting our jurisdiction over an appeal. *M.O. Dental Labs v. Rape*, 139 S.W.3d 671, 673 (Tex. 2004) (citing *New York Underwriters Ins. Co. v. Sanchez*, 799 S.W.2d 677, 678 (Tex. 1990)). Although there are certain statutory exceptions permitting an interlocutory appeal when the order or judgment is not final, *Lehmann*, 39 S.W.3d at 195 n.12 (collected cases and statutes cited therein), none of those exceptions apply to summary judgment orders. *Id.*

Because the order being appealed in this proceeding does not address the claims Baker has asserted against Whittley, it does not dispose of all claims and parties and is, therefore, not a final order or judgment. Accordingly, this appeal is dismissed for want of jurisdiction.

Per Curiam