In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00053-CV

IN RE ESTATE OF WILLIAM L. HASTINGS, DECEASED

On Appeal from the County Court at Law No. 1
Potter County, Texas
Trial Court No. 28,773-P, Honorable Richard Dambold, Presiding

March 23, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

One can compare the underlying dispute in this case as an effort to use a blood pressure cuff to determine a pulse rate: it probably could be used but wasn't really made for that. Here, the administrators of the Estate of William L. Hastings (Estate) endeavored to use § 31.002 of the Texas Civil Practice and Remedies Code to recover property from Laura Ponder. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 31.002(a) (West 2015) (stating that a judgment creditor is entitled to aid from a court to reach property to obtain satisfaction of a judgment "if the judgment debtor owns property" that cannot be

readily attached and is not exempt from seizure for payment of liabilities).[1] The property here was not that of Ponder, though. Rather, a jury had adjudicated it to be owned by the Estate, and the administrators were simply attempting to enforce the judgment entered upon that verdict and secure its return.[2] In response to the Estate's effort, the trial court issued one turnover order in December of 2015. Effort to enforce that order fell short due to inclement weather. So, another turnover order issued in January of 2016, and an attempt to enforce it was thwarted by the conduct of Ponder. Eventually a third order was issued wherein Ponder was also found in contempt of court. The proceeding before us began with Ponder filing a notice of appeal from the January 2016 order. No notice was filed from the May 2016 edict.

Ponder raised four general issues. Within several of those four issues is argument that either may relate to the issue or interject independent issues. At other times, the argument underlying a particular issue is rather conclusory. At other times, the argument is rambling and disjointed. Needless to say, it is not the clear, concise argument demanded by Texas Rule of Appellate Procedure 38.1(i). Nevertheless, the Estate moved to dismiss those issues which could be read as encompassing the contempt finding. It believed we lacked jurisdiction over them because Ponder utilized the wrong procedural mechanism; that is, she should have initiated a petition for writ of habeas corpus instead of a direct appeal. The Estate also noted the absence of any

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[1] *See In re Estate of Hutchins*, 391 S.W.3d 578, 584–85 (Tex. App.—Dallas 2012, orig. proceeding) (discussing relationship between statutory turnover relief under § 31.002 of the Texas Civil Practice and Remedies Code and turnover relief, more tailored to and typically employed in the probate context, requesting an order for delivery of property to an estate administrator pursuant to former § 37 of the Texas Probate Code (the equivalent of which may now be found at TEX. EST. CODE ANN. §§ 101.001, 101.003 (West 2014)).

[2] Ponder questioned below whether § 31.002 of the Texas Civil Practice and Remedies Code was the appropriate vehicle through which to obtain the property in question. The matter was not broached on appeal, however.

notice of appeal from the May 2016 order; that, too, allegedly denied us jurisdiction over the decree. In working through the issues and argument of both Ponder and the Estate, we not only concluded that the Estate was correct but also that nothing lies before us for review.

Appeal from Contempt Order

Regarding the contempt order, Ponder asks, "Must the court, when civil contempt is imposed, have the order spell out exactly what duties and obligations are imposed and what the contemnor can do to purge the contempt[?]" This is a question that we cannot answer in this proceeding due to the want of jurisdiction.

Simply put, courts of appeals lack jurisdiction to review contempt orders by way of direct appeal. *Johnson v. Clark*, No. 07-11-00122-CV, 2011 Tex. App. LEXIS 8593, at *3–4 (Tex. App.—Amarillo Oct. 28, 2011, no pet.) (mem. op.). It matters not that the contempt finding is made via its own independent decree or included with other matters in a final judgment subject to appeal. *See id.* Contempt orders are reviewed through original proceedings, and the particular original proceeding depends on whether confinement is involved. *See id.* at *4. The matter before us being a direct appeal from the January 2016 turnover order, we cannot adjudicate issues regarding the propriety of the trial court's contempt order.

Appeal from May 2016 Amended Order of Turnover

Next, the Estate correctly argues that the only notice of appeal appearing of record is that filed by Ponder on February 1, 2016. It references the January 2016 turnover order issued by the trial court. A notice purporting to appeal from the May 2016 turnover order was not filed. Furthermore, through the May edict, the trial court

not only ordered the turnover of the same property encompassed within the January order but also held Ponder in contempt, levied additional attorney's fees against Ponder, set an amount to supersede enforcement of the judgment underlying the turnover orders, and nullified a trespass notice issued by Ponder and used to thwart effort to enforce the January decree. Thus, the January and May directives were and are different in substantive ways. That is, the latter is not merely a reiteration of the former with only clerical or nonsubstantive distinctions. There are two different orders. This becomes consequential since each turnover order is an appealable judgment.

As discussed in *Bahar v. Lyon Fin. Serv., Inc.*, 330 S.W.3d 379, 386 (Tex. App.—Austin 2010, pet. denied), a turnover order normally acts as a mandatory injunction since it directs the judgment debtor to undertake some act. Having such a character, each successive turnover order issued by the trial court is an appealable decree. *See id.*; *accord Alexander, Dubose, Jefferson & Townsend, LLP v. Chevron Phillips Chem. Co.*, 503 S.W.3d 1, 5 (Tex. App.—Beaumont 2016, pet. filed) (stating that a "turnover order must be challenged on direct appeal and is subject to the deadlines for perfecting an appeal"); *Goodman v. Compass Bank*, No. 05-15-00812-CV, 2016 Tex. App. LEXIS 8338, at *6–7 n.3 (Tex. App.—Dallas Aug. 3, 2016, no pet.) (mem. op.) (stating that a "trial court may render a number of amended turnover orders, all of which could be appealable judgments if they act as mandatory injunctions against the judgment debtor"). Should a notice purporting to appeal from the turnover order not be filed, then we lack the jurisdiction to consider disputes relating to it. *See Alexander, Dubose, Jefferson & Townsend, LLP*, 503 S.W.3d at 5, 8. What that means here, then, is that

because Ponder failed to appeal from the May 2016 turnover decree, we lack the jurisdiction to consider issues related to it.

Appeal from January 2016 Turnover Order

Next, an amended order generally supersedes and nullifies the order it amends. *See Black v. Shor*, 443 S.W.3d 170, 175–76 (Tex. App—Corpus Christi 2013, no pet.) (stating that "[o]rdinarily, an amended final order supersedes any prior final order when the 'order amounts to something more than marking through [an earlier date] and substituting another date on the final order'"); *Bahar*, 330 S.W.3d at 386 (same); *see also Warren v. Earley*, No. 10-10-00428-CV, 2011 Tex. App. LEXIS 7210, at *14–15 (Tex. App.—Waco Aug. 31, 2011, no pet.) (mem. op.) (holding that the third protective order issued per a motion *nunc pro tunc* which modified the amended protective order and "thereby render[ed] any complaints about the amended protective order moot"). The same is true for turnover orders; an amended turnover order supersedes and renders moot previously issued turnover orders. *See Goodman*, 2016 Tex. App. LEXIS 8338, at *7 n.3 (involving an amended turnover order and stating that "[t]he rule that an amended order supersedes the order it amends applies to appealable orders rendered in aid of enforcing a judgment"); *see also McDowell v. McDowell*, No. 02-16-00038-CV, 2016 Tex. App. LEXIS 8423, at *2 (Tex. App.—Fort Worth Aug. 4, 2016, no pet.) (mem. op.) (involving a temporary injunction and stating that "[a]n amended or modified temporary injunction supersedes and implicitly vacates a prior temporary injunction").

As previously mentioned, the May 2016 order at bar amended the January turnover in more than a clerical or *de minimus* way, though many provisions of the two remained similar. Thus, the former effectively superseded the latter and rendered it

moot. It may be that some of the complaints levied by Ponder regarding the January turnover order could also pertain to the May edict, but no appeal was taken from the May decree. So, even if we were to assume *arguendo* that the objections concerning the January directive were not moot, the objectionable terms remained in the May decree, which decree we cannot review due to the lack of jurisdiction. And, this may be why there is sense in the rule that each turnover order is susceptible to appeal; if each is appealed then the same or overlapping complaints with each decree would remain subject to review. *See Bahar*, 330 S.W.3d at 387 (addressing situation in which the appellant filed only a notice of appeal from the last turnover order and thereby waived complaints found in prior, unappealed orders). But, that was not done here, and because the January 2016 turnover order has been rendered moot or a nullity, complaints related to it are not before us. *See Warren*, 2011 Tex. App. LEXIS 7210, at *14–15.

In short, we grant the Estate's motion to dismiss and, in doing so, expand its scope to dismiss the entire appeal for want of jurisdiction.

Per Curiam