



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

No. 07-20-00302-CV

P. S.-C., APPELLANT

V.

THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES, APPELLEE

On Appeal from the County Court at Law No. 1
Williamson County, Texas¹
Trial Court No. 20-0047-CPSC1, Honorable Brandy Hallford, Presiding

December 30, 2021

MEMORANDUM OPINION

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

On July 1, 2020, the Texas Department of Family and Protective Services filed its petition for an order in aid of investigation of a report of child abuse or neglect.² See TEX.

¹ Originally appealed to the Third Court of Appeals, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. See TEX. GOV'T CODE ANN. § 73.001. Should a conflict exist between precedent of the Third Court of Appeals and this Court on any relevant issue, this appeal will be decided in accordance with the precedent of the Third Court of Appeals. TEX. R. APP. P. 41.3.

² The respondents in this case were the parents of the two children that were the subject of the petition.

FAM. CODE ANN. § 261.303(b). The trial court issued its order that same day. After the Department completed its investigation, it submitted an order of dismissal which was signed by the trial court on July 20, 2020. Within thirty days of the dismissal, on August 19, Father³ filed a motion for sanctions against the Department, seeking a judgment of \$3,000 in attorney’s fees and costs associated with his defense of the underlying action. The Department’s response alleged that the trial court had lost plenary power and sovereign immunity barred an award of sanctions.⁴ The trial court held a hearing on October 19, 2020, first addressing the issue of its plenary jurisdiction. At the conclusion of the hearing, the trial court announced on the record that it did not have authority to act on Father’s pending motions because its plenary power expired. Father filed his notice of appeal later that same day. The trial court signed an order the next day memorializing its decision.

By his appeal, Father contends the trial court erred in its determination that it lacked plenary power to rule on his post-judgment motion for sanctions. We agree with Father and reverse the trial court’s order.

Discussion and Law

Whether a trial court has plenary jurisdiction is a question of law reviewed de novo. *Dawson v. Briggs*, 107 S.W.3d 739, 744 (Tex. App.—Fort Worth 2003, no pet.); see also *St. Joseph Hosp. v. Wolff*, 999 S.W.2d 579, 586 (Tex. App.—Austin 1999), *rev’d on other*

³ To protect the privacy of the parties involved, we will refer to the appellant father as “Father.” See TEX. FAM. CODE ANN. § 109.002(d); TEX. R. APP. P. 9.8(b). Mother is not a party to the appeal.

⁴ Father filed a motion to strike the Department’s response as “[i]nadmissible under the Texas Rules of Evidence Rule 408” The clerk’s record does not contain an order setting Father’s motion for hearing. However, the reporter’s record indicates that the trial court conducted a hearing on October 19, 2020. At the outset of the hearing, the trial court noted Father’s pending motions and directed the parties to address the plenary power issue first.

grounds, 94 S.W.3d 513 (Tex. 2002) (stating legal conclusions should be reviewed de novo).

After signing a final judgment, a trial court retains jurisdiction over a case for a minimum of thirty days. TEX. R. CIV. P. 329b(d). The plenary period may be extended by the filing of a motion to modify, correct, or reform the judgment. TEX. R. CIV. P. 329b(e), (g). A motion to incorporate sanctions as part of the final judgment qualifies as a motion to modify under Texas Rule of Civil Procedure 329b(g). *Lane Bank Equip. Co. v. Smith S. Equip., Inc.*, 10 S.W.3d 308, 314 (Tex. 2000); *Cocke v. Elliott*, No. 03-12-00667-CV, 2013 Tex. App. LEXIS 10736, at *19-20 (Tex. App.—Austin Aug. 27, 2013, pet. denied) (mem. op.). As such, a timely filed motion for sanctions extends the trial court’s plenary jurisdiction. *Lane Bank Equip. Co.*, 10 S.W.3d at 310. Once extended by a timely filed motion, the trial court retains its plenary power until thirty days after the motion is overruled, whether by written order or by operation of law. TEX. R. CIV. P. 329b(c), (e), & (g); *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 409 (Tex. App.—Houston [1st Dist.] 2005, pet. denied). When the trial court does not expressly rule on the motion, the motion is overruled as a matter of law on the seventy-fifth day after the judgment was signed. *In re T.G.*, 68 S.W.3d 171, 177 (Tex. App.—Houston [1st Dist.] 2002, pet. denied) (op. on reh’g).

In the present case, the trial court signed its order of dismissal, a final judgment, on July 20, 2020. Father filed his motion for sanctions on August 19, 2020, within the initial period of plenary power and effectively extending the trial court’s plenary power until the motion was either decided by written order or overruled by operation of law. We consider the motion overruled by operation of law on October 3, 2020, because the trial

court did not rule on the motion within seventy-five days of the July 20, 2020, order of dismissal. See TEX. R. CIV. P. 329b(c). The trial court retained its plenary jurisdiction for an additional thirty days, meaning its plenary power expired on November 2, 2020. See TEX. R. CIV. P. 329b(e), (g). Therefore, the trial court had plenary power to act on Father's pending motion for sanctions at the October 19, 2020 hearing and erred by refusing to act on Father's motion. We sustain Father's issue and reverse the judgment.

In his appellate brief, Father acknowledges that this appeal is limited to the issue of whether the trial court had plenary power on October 19, 2020. Consequently, we will not address Father's alternative issue on sovereign immunity as the trial court did not address that issue.

Conclusion

Having resolved Father's issue in his favor, we reverse and remand this case to the trial court for further proceedings.

Judy C. Parker
Justice