TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00234-CV

Carmen Chase Hunter, Appellant

v.

David Mattax, in his Official Capacity as Commissioner of Insurance; The Texas Department of Insurance; and The Attorney General of Texas, Appellees

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 250TH JUDICIAL DISTRICT NO. D-1-GN-13-001957, HONORABLE KARIN CRUMP, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

Pro se appellant Carmen Chase Hunter filed a notice of appeal from the trial court's "judgment or order dated March 24, 2016." The order complained of is an order denying Hunter's motion for default judgment against appellees David Mattax, in his Official Capacity as Commissioner of Insurance, the Texas Department of Insurance, and the Attorney General of Texas. We dismiss the appeal for want of jurisdiction. *See* Tex. R. App. P. 42.3(a).

Procedural Background

Hunter filed her original petition for declaratory judgment on June 7, 2013. Hunter's suit was dismissed for want of prosecution on August 25, 2014. Hunter filed a motion to reinstate and, when the trial court failed to hold a hearing on her motion, appealed to this Court.[1] On April

[1] *See Hunter v. Texas Dep't of Ins.*, No. 03-14-00737-CV, 2016 WL 284427 (Tex. App.—Austin Jan. 14, 2015, no pet.) (mem. op.).

7, 2015, while the case was pending on appeal, Hunter filed a motion for default judgment. After we issued our opinion stating that a hearing on Hunter's motion was required, the trial court held a hearing. On March 1, 2016, the court signed an order reinstating Hunter's lawsuit, specifying that a "Notice of Intent to take a default judgment against Defendants must be mailed to the attorney general pursuant to Texas Civil Practice and Remedies Code § 39.001."[2]

On March 17, 2016, Hunter filed an announcement of ready for a March 22 hearing on her April 2015 motion for default judgment. On March 21, appellees filed their original answer. They also filed a response to Hunter's motion for default judgment in which they noted that they had never been served with citation,[3] that Hunter's motion was moot because they had filed an answer,[4] that Hunter had not complied with section 39.001, and that appellees had only learned of the hearing

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[2] Notice of intent to take a default judgment against "the state, a state agency, or a party in a civil case for which Chapter 104 authorizes representation by the attorney general" must be mailed to the Attorney General at the Attorney General's office by certified mail, return receipt requested, at least ten days before entry of the default judgment. Tex. Civ. Prac. & Rem. Code § 39.001.

[3] We take judicial notice of filings in Hunter's earlier appeal, which include a copy of a letter sent by the Travis County District Clerk on July 12, 2013, asking Hunter to submit "copies of the petition for each party that will be attached to the citation" and the name and address for each party she wished to have served. Neither the record or filings in that case or in this case indicate that Hunter ever provided the requested items. Appellees filed their answer within three weeks of the case being reinstated, opting to answer without having been served with citation. *See* Tex. R. Civ. P. 121 (answer constitutes appearance and dispenses with necessity of service of citation).

[4] *See* Tex. R. Civ. P. 239 ("at any time after a defendant is required to answer, the plaintiff may . . . take judgment by default against such defendant if he has not previously filed an answer, and provided that the return of service shall have been on file with the clerk for the length of time required by Rule 107"); *see, e.g.*, *Davis v. Jefferies*, 764 S.W.2d 559, 560 (Tex. 1989) (" A default judgment may not be rendered after the defendant has filed an answer."); *In re I.L.S.*, 339 S.W.3d 156, 159 (Tex. App.—Dallas 2011, no pet.) ("A no-answer default judgment may not be rendered against a defendant who has filed an answer."); *Thomas v. Gelber Grp., Inc.*, 905 S.W.2d 786, 788 (Tex. App.—Houston [14th Dist.] 1995, no writ) ("A default judgment may not be granted when the defendant has an answer on file, even if the answer was filed late.").

on March 17, when the Attorney General's Office "received through e-filing service" Hunter's announcement of ready. Hunter replied, asserting that citation was not required to be served on appellees because "they have made many appearances in this court," that she had mailed her motion for default judgment via certified mail in late March 2015 and in mid-April 2015, and that appellees "were obviously aware of the Motion [to] Default on November 3, 2014. And [appellees] failed to file an answer until March 21, 2016." On March 22, the trial court held a hearing, and on March 24, the court signed an order denying Hunter's motion for default judgment.

Discussion

First, we note that in Hunter's brief, she also seeks a "petition for injunction, petition for a writ of mandamus, and petition for a writ of prohibition directed to" three trial court judges and the Attorney General. That seeking of extraordinary relief as an alternative to direct appeal is in violation of our notice, sent to Hunter by the Clerk of this Court on October 24. In that notice, we denied Hunter's motion to file a brief exceeding the length limits imposed by the rules of appellate procedure and said that her "briefing must be limited to her appeal from the trial court's March 24, 2016 order and may not raise any ancillary issues, such as those she attempted to include in her October 11, 2016 filing as grounds for extraordinary relief. Any such issues must be raised in separate proceedings." We decline to consider Hunter's arguments for extraordinary relief. *See Pinnacle Gas Treating, Inc. v. Read*, 13 S.W.3d 126, 127 (Tex. App.—Waco 2000, no pet.) ("Pinnacle asserts in its brief that an alternative basis for granting relief would be to issue a writ of mandamus. . . . A petition for a writ of mandamus commences an original proceeding that is governed by different rules than the rules governing direct appeals. . . . We will not entertain this request."); *see*

also In re Estate of Velvin, No. 06-13-00028-CV, 2013 WL 5459946, at *1 (Tex. App.—Texarkana Oct. 1, 2013, no pet.) (mem. op.) ("We agree with the First and Fifth District Courts of Appeals that mandamus relief cannot be requested in a direct appeal"; "A direct appeal and a mandamus action are two different proceedings governed by different rules, and they cannot be filed together as a single proceeding. Two parallel proceedings could be filed, but not a direct appeal and a mandamus in one action."); *Hamilton Guar. Capital, LLC v. Orphan House Prods., LLC*, No. 05-11-01401-CV, 2012 WL 2359881, at *1 (Tex. App.—Dallas June 21, 2012, no pet.) (mem. op.) (refusing to entertain request for writ of mandamus as alternative to direct appeal; "Hamilton offers no legal authority, nor have we found any, to suggest that mandamus relief may be sought alternatively in a direct appeal."); *Hamlett v. Hamlett*, No. 01-04-01097-CV, 2006 WL 2690304, at *2 (Tex. App.—Houston [1st Dist.] Sept. 21, 2006, pet. denied) (suppl. op. on reh'g) (mem. op.) ("Appellant has cited no authority, nor have we found any, that suggests that mandamus relief may be sought alternatively in a direct appeal.").

As for the trial court's refusal to grant default judgment after appellees had filed an answer to Hunter's suit, the refusal to grant a motion for default judgment is an interlocutory order that is not among the limited kinds of orders from which an interlocutory appeal may be taken. *See* Tex. Civ. Prac. & Rem. Code § 51.014; *Aguilar v. Livingston*, 154 S.W.3d 832, 833 (Tex. App.—Houston [14th Dist.] 2005, no pet.) (denial of default judgment is not subject to interlocutory appeal; denial of default judgment may be challenged in appeal from final judgment or order).

Conclusion

Hunter has attempted to appeal from an order that may not be reviewed by way of an interlocutory appeal. She has also requested, as an alternative, extraordinary relief in her briefing

in her direct appeal, in direct violation of our request and the rules of appellate procedure. We dismiss Hunter's appeal for lack of jurisdiction and decline to consider her alternative arguments for extraordinary relief.[5]

[5] Throughout her many proceedings filed in the trial court and in this Court, Hunter has shown either willful disregard of or a fundamental lack of understanding of many of the rules, both statewide and local, that apply to original lawsuits, appeals, and original proceedings, including the operation of the Travis County rotating docket system. *See, e.g.*, Tex. R. Civ. Proc. 3a (trial courts may make local rules), 18a (governing recusal of judges), 18b (same), 99-107 (governing service of citation), 239 (governing no-answer default judgments); Tex. R. App. P. 52 (governing original proceedings); Travis Cty. Dist. Ct. Loc. R. 1.2 (all civil cases other than those on specialized dockets are set on Central Docket), 1.3 (any district court judge may conduct hearing), 2.2 (requesting setting on Central Docket), 2.9 (notice of setting to be provided by party obtaining setting), 9.2 (party requesting telephone hearing must make "[a]ll arrangements for a conference call"). We caution Hunter against insulting language directed at the trial court judges or clerks and warn that the use of such language in future filings may result in the imposition of sanctions. *See Murry v. Bank of Am., N.A.*, No. 02-13-00303-CV, 2014 WL 3866154, *4-5 (Tex. App.—Fort Worth Aug. 7, 2014, pet. dism'd w.o.j.) (mem. op.) (pro se litigant's "comments in her brief indicate that she does not understand the role of the judge and of the attorneys at trial," and court reminded her to "conduct herself with dignity and to show respect for the trial judge and opposing counsel"); *Gleason v. Isbell*, 145 S.W.3d 354, 356-61 (Tex. App.—Houston [14th Dist. 2004, order) (Frost, J., concurring in part and dissenting in part) (cautioning pro se appellant against attacking judges, opposing parties, counsel, and others involved in legal process); *see also Hunter v. United States Dist. Court for Dist. of Wyo.*, 135 S.Ct. 1730 (2015) ("As [Hunter] has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and petition submitted in compliance with Rule 33.1."); *Hunter v. Boron*, 135 S.Ct. 1710 (2015) (same); *Hunter v. Boron*, 135 S.Ct. 1709 (2015) (same); *Hunter v. Texas Dep't of Ins.*, No. 03-15-00326-CV, 2015 WL 3827568, at *1 & n.1 (Tex. App.—Austin June 18, 2015, no pet.) (mem. op.) (explaining that it was Hunter's titling of document, in part, as "Motion to Transfer this Case to the Court of Appeals" that led to document being interpreted as notice of appeal, noting that Hunter had made improper accusations against this Court's Clerk's Office, and cautioning against "baseless accusations of misconduct against our Clerk's Office").

David Puryear, Justice

Before Justices Puryear, Pemberton, and Field

Dismissed for Want of Jurisdiction

Filed: January 20, 2017