

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00815-CV

Kevin Bierwirth, Appellant

v.

Rio Rancho Properties, LLC, Appellee

**FROM THE DISTRICT COURT OF WILLIAMSON COUNTY, 277TH JUDICIAL DISTRICT
NO. 15-0819-C277, HONORABLE BETSY F. LAMBETH, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant Kevin Bierwirth seeks to appeal an order signed by the trial court on November 3, 2016, dismissing Bierwirth’s claims against appellee Rio Rancho Properties, LLC. According to the order, the court dismissed Bierwirth’s claims after he failed to timely furnish security in accordance with a prior court order that, pursuant to Chapter 11 of the Texas Civil Practice and Remedies Code, declared Bierwirth a vexatious litigant and required him to post security by a date certain. *See* Tex. Civ. Prac. & Rem. Code § 11.055 (court shall order security if court determines plaintiff is vexatious litigant), .056 (dismissal for failure to furnish security). Bierwirth has now filed a motion to abate his appeal, explaining that he “inadvertently filed his appeal prematurely.”

The jurisdiction of this Court is limited to the review of final judgments and certain interlocutory orders authorized by statute. *See id.* §§ 51.012, .014; *Lehmann v. Har-Con Corp.*,

39 S.W.3d 191, 195 (Tex. 2001). “[A] judgment issued without a conventional trial is final for purposes of appeal if and only if either it actually disposes of all claims and parties then before the court, regardless of its language, or it states with unmistakable clarity that it is a final judgment as to all claims and all parties.” *Lehmann*, 39 S.W.3d at 195.

The clerk’s record reveals, and Bierwirth acknowledges in his motion, that counterclaims brought by Rio Rancho Properties currently remain pending in the trial court proceedings. Because the order that Bierwirth seeks to appeal does not dispose of Rio Rancho Properties’s claims against Bierwirth, the order is not a final judgment. In addition, nothing in Chapter 11, nor any other statute, expressly provides for the interlocutory appeal of the dismissal order. *See CMH Homes v. Perez*, 340 S.W.3d 444, 448 (Tex. 2011) (noting that statutes permitting interlocutory appeals “present a narrow exception to the general rule that interlocutory orders are not immediately appealable”). Accordingly, we deny Bierwirth’s motion to abate and dismiss this case for want of jurisdiction.¹

¹ Under the appellate rules, this Court may abate a case to allow “an order that is not final to be made final and may allow the modified order and all proceedings relating to it to be included in a supplemental record.” Tex. R. App. P. 27.2. Because it is unclear what steps must be taken by the parties and the trial court before a final judgment can be signed in this case, we decline to abate this appeal. Instead, Bierwirth may file a separate notice of appeal when the trial court signs a final judgment or appealable order in the case, *see id.* R. 26.1 (time to perfect civil appeal calculated from date judgment or order is signed), and upon proper motion, may request that the Clerk of the Court transfer any or all of the appellate record filed in this case to the new cause number.

Scott K. Field, Justice

Before Chief Justice Rose, Justices Field and Bourland

Dismissed for Want of Jurisdiction

Filed: May 26, 2017