TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-18-00117-CV

Ewing Insurance Services, Inc. and Charles Candler, Appellants

v.

RLB Texas Auto Center, LLC d/b/a Texas Auto Center, LP; Robert Blankenship, Individually; and Erika Blankenship, Individually, Appellees

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 200TH JUDICIAL DISTRICT NO. D–1-GN-17-000203, HONORABLE AMY CLARK MEACHUM, JUDGE PRESIDING

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

Appellants Ewing Insurance Services, Inc. and Charles Candler (collectively, the "Appellants") seek to appeal a summary judgment signed on October 12, 2017, which dismissed all of the Appellants' claims against RLB Texas Auto Center, LLC d/b/a Texas Auto Center, LP; Robert Blankenship; and Erika Blankenship (collectively, the "Appellees"). The Appellees have now filed a motion to dismiss this appeal for want of jurisdiction, arguing that the Appellants' notice of appeal was untimely filed.

"[W]ith a few mostly statutory exceptions [not applicable here], an appeal may be taken only from a final judgment." *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001); *see* Tex. Civ. Prac. & Rem. Code § 51.014 (addressing appeals from interlocutory orders). Generally, there can only be one final judgment in a case. Tex. R. Civ. P. 301 ("Only one final judgment shall be rendered in any cause except where it is otherwise specifically provided by law.").

Under the Texas Rules of Appellate Procedure, the deadline for filing a notice of appeal from a final judgment begins to run on the date the trial court signs the final judgment. *See* Tex. R. App. P. 26.1. When, as in this case, there has not been a traditional trial on the merits, there is no presumption of finality of judgment. *Crites v. Collins*, 284 S.W.3d 839, 840 (Tex. 2009). "To determine whether an order is final, courts and parties must examine the express language of the order and whether the order actually disposes of all claims against all parties." *Id.* (citing *Lehmann*, 39 S.W.3d at 200).

Based on language in the summary-judgment order and the record before us, we conclude that the summary judgment that is the subject of this appeal is not a final, appealable judgment. The summary-judgment order expressly dismisses all of the Appellees' claims against the Appellants but does not unequivocally state that it finally disposes of all claims and all parties. *See Lehmann*, 39 S.W.3d at 205 (stating that language of judgment or order can make it final, even though it should have been interlocutory, "if that language expressly disposes of all claims and all parties"). In addition, the record reveals that at the time the trial court signed the summary-judgment order, the Appellees had counterclaims pending against the Appellants. *See id.* (stating that order with language that plaintiff take nothing by his claims, or that case is dismissed, shows finality if there are no other claims by other parties). Nothing in the record indicates that the trial court later signed an order of nonsuit, an order of severance, or any other order disposing of those pending counterclaims.[1] *Farmer v. Ben E. Keith Co.*, 907 S.W.2d 495, 496 (Tex. 1995) ("When a judgment

[1] In response to the motion to dismiss, the Appellants claim that the summary-judgment order became final on November 30, 2017, when one of the defendants, Erika Blankenship, filed a notice of nonsuit. While a nonsuit taken after an otherwise interlocutory judgment may operate as a final judgment by disposing of any remaining claims or parties, *see Villafani v. Trejo*, 251 S.W.3d 466, 468 (Tex. 2008) (interlocutory denial of motion for sanctions and dismissal became final

is interlocutory because unadjudicated parties or claims remain before the court, and when one moves to have such unadjudicated claims or parties removed by severance, dismissal, or nonsuit, the appellate timetable runs from the signing of a judgment or order disposing of those claims or parties."). As a result, the record does not contain a final, appealable judgment.

Because an appeal can only be taken from a final judgment or appealable order, we lack jurisdiction to consider this appeal. We dismiss this appeal for want of jurisdiction. *See* Tex. R. App. P. 42.3(a).

Scott K. Field, Justice

Before Chief Justice Rose, Justices Goodwin and Field

Dismissed for Want of Jurisdiction

Filed: June 1, 2018

for purposes of appeal following nonsuit of remaining claims), the trial court in this case never signed an order of nonsuit. *See Farmer v. Ben E. Keith Co.*, 907 S.W.2d 495, 496 (Tex. 1995) ("The appellate timetable does not commence to run other than by signed, written order, even when the signing of such an order is purely ministerial."). Moreover, nothing in the record indicates that the counterclaims brought by the other appellees, RLB Texas Auto Center, LLC and Robert Blankenship, have been nonsuited or otherwise resolved.