

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00517-CV

Clyde Nubine, Appellant

v.

**Texas Workforce Commission c/o, Mr. Paul Tabor; Travis County Shoe Hospital, Inc., c/o
Mr. Carrol Kelly; Mr. Kaub Harper; and Mr. Raul, et al., Appellees**

**FROM THE 459TH DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-GN-17-006522,
THE HONORABLE CATHERINE MAUZY, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant Clyde Nubine, acting pro se, filed suit against appellees Texas Workforce Commission (TWC) and Travis County Shoe Hospital, his former employer, alleging that they conspired to deprive Nubine of unpaid wages. TWC's plea to the jurisdiction was granted by the district court. The district court dismissed Nubine's claims against TWC in their entirety but left pending Nubine's claim against Travis County Shoe Hospital.¹ Nubine has filed a notice of appeal from the district court's order.

Appellate courts have jurisdiction over appeals from final judgments and from certain interlocutory orders designated by the legislature as appealable. *Lehmann v. Har-Con*

¹ Specifically, the order provided, "Nothing in this Order of Partial Dismissal affects the remaining claim of Plaintiff under 42 U.S.C. § 1983 against Travis County Shoe Hospital, Inc."

Corp., 39 S.W.3d 191, 195 (Tex. 2001). A judgment is final for purposes of appeal if it disposes of all pending parties and claims in the record. *Id.* The district court’s “order of partial dismissal” is not a final order, as it does not dispose of Nubine’s remaining claim against Travis County Shoe Hospital.² Nevertheless, because the district court’s order grants Texas Workforce Commission’s plea to the jurisdiction, it is an appealable interlocutory order. *See* Tex. Civ. Prac. & Rem. Code 51.014(a)(8) (providing that person may appeal from interlocutory order that “grants or denies a plea to the jurisdiction by a governmental unit”).

However, appeals from interlocutory orders are accelerated. *See* Tex. R. App. P. 28.1(a). In an accelerated appeal, the notice of appeal must be filed within 20 days after the judgment or order is signed. Tex. R. App. P. 26.1(b). The district court’s order was signed on April 29, 2019, making Nubine’s notice of appeal due on or before May 20, 2019.³ It was not filed until August 6, 2019. On that same date, Nubine filed a motion for extension of time to file his notice of appeal, but that motion was also untimely. *See* Tex. R. App. P. 26.3 (providing that appellate court may extend time to file notice of appeal if motion for extension of time is filed “within 15 days after the deadline for filing the notice of appeal”). Absent a timely-filed notice of appeal, this Court lacks jurisdiction over this appeal. *See In re K.A.F.*, 160 S.W.3d 923, 927–28 (Tex. 2005). Therefore, we dismiss the appeal for want of jurisdiction and, consequently,

² Also, there is no order in the record severing Nubine’s claims against TWC from his claim against Travis County Shoe Hospital. *See Diversified Fin. Sys., Inc. v. Hill, Heard, O’Neal, Gilstrap & Goetz, P.C.*, 63 S.W.3d 795, 795 (Tex. 2001) (“As a rule, the severance of an interlocutory judgment into a separate cause makes it final.”).

³ On May 22, 2019, Nubine filed in the district court a “motion to vacate, modify, correct, or reform” the district court’s order, i.e., a motion for new trial. *See* Tex. R. Civ. P. 329b. “Filing a motion for new trial, any other post-trial motion, or a request for findings of fact will not extend the time to perfect an accelerated appeal.” Tex. R. App. P. 28.1(b).

Nubine’s motion for extension of time to file his notice of appeal is dismissed as moot. *See* Tex. R. App. P. 42.3(a). Once the district court enters a final order, Nubine may file a notice of appeal at that time. *See Martinez v. Humble Sand & Gravel*, 875 S.W.2d 311, 312–13 (Tex. 1994).

Gisela D. Triana, Justice

Before Chief Justice Rose, Justices Triana and Smith

Dismissed for Want of Jurisdiction

Filed: September 25, 2019