

NO. 12-16-00203-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***EDNA NOBLES, WAYMOND
NOBLES, MICHAEL MOORE,
JUNEQUA NOBLES, LAVATRICE
DAVIS AND DIANA JACKSON,
APPELLANTS***

§ *APPEAL FROM THE 123RD*

§ *JUDICIAL DISTRICT COURT*

V.

***WILLIAM L. HILL A/K/A BILL HILL
INDIVIDUALLY, AND D/B/A BILL
HILL OIL & GAS PRODUCTION,
APPELLEES***

§ *SHELBY COUNTY, TEXAS*

MEMORANDUM OPINION

Edna Nobles, Waymond Nobles, Michael Moore, Junequa Nobles, Lavatrice Davis, and Diana Jackson (collectively Intervenors) appeal from a summary judgment rendered in favor of William L. Hill a/k/a Bill Hill, individually, and d/b/a Bill Hill Oil & Gas Production (Hill) in their suit concerning an oil and gas lease. Intervenors raise six issues. We dismiss for want of jurisdiction.

BACKGROUND

In 2012, a group of leaseholders sued Hill for damages in connection with his operation of an oil and gas lease on the plaintiffs' 75.29 acres in Shelby County.¹ On November 25, 2015, Waymond, Edna, Junequa, and Michael filed a petition in intervention in that suit asserting an undivided interest in the same two tracts of land. On January 25, 2016, they filed their amended petition in intervention adding Lavatrice and Diane as Intervenors. They claim damaging contamination resulted from Hill's negligence and that his actions deprived them of use of the

¹ The original plaintiffs are not parties to this appeal.

land and royalties, and caused damage to timber on the property. They further claim that Hill breached the lease agreement.

Hill filed a combined no evidence and traditional motion for summary judgment asserting entitlement to judgment as a matter of law on all of Intervenors' claims. The trial court "granted judgment" that Intervenors own undivided interests in the property and granted Hill's motion for summary judgment "in its entirety." The court ordered that Intervenors take nothing "except as otherwise provided herein."

JURISDICTION

In their second issue, Intervenors assert that the trial court erred in granting summary judgment in favor of Hill because Hill's motion did not address all parties and causes of action. Specifically, they contend the motion "practically ignored the cause regarding the unenforceability of the lease" and Intervenors' alternative claim for breach of contract. Further, they complain that an original plaintiff, Peggy Nobles, had not been disposed of.

To be appealable, a judgment must be final. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). When there has not been a conventional trial on the merits, an order or judgment is not final for purposes of appeal unless it actually disposes of every pending claim and party or unless it clearly and unequivocally states that it finally disposes of all claims and all parties. *Id.* at 205.

This suit arose when several plaintiffs, all owning undivided interests in two tracts of land, sued Hill for lease violations in cause number 12CV32, 231. Eventually, Intervenors filed their petition in that suit. Hill moved for summary judgment on the Intervenors' claims, which the trial court granted. The judgment recites cause number 12CV32, 231 and was signed on June 20, 2016. The six Intervenors are specifically named in the body of the judgment. However, the judgment does not include unequivocal language that indicates finality. Intervenors filed their notice of appeal from this judgment on July 13, 2016.

The original plaintiffs settled with Hill, and their claims were disposed of by an order of dismissal reciting cause number 12 CV32, 231 and dated August 26, 2016. The record shows that Peggy Nobles was one of the original plaintiffs, she died in 2013 while the case was pending, and Edna Nobles, an Intervenor, is the executor of her estate. Peggy died before the plaintiffs settled their suit with Hill. The attorney of record for all original plaintiffs withdrew as

Peggy’s counsel in 2015, apparently at Edna’s request. However, Peggy’s name was included on the plaintiffs’ amended petition filed January 25, 2016. The plaintiffs’ motion to dismiss is not in our record. The order granting the motion to dismiss specifically states that all claims filed by plaintiffs against defendants are dismissed and names individual plaintiffs in the body of the order. However, neither Peggy’s name, nor that of her heir or representative, is included in the order of dismissal. Our record includes a suggestion of death which Edna filed in the trial court on October 14, 2016, almost four months after the summary judgment was signed and three months after the notice of appeal was filed. Edna also filed a motion “to substitute as the party for [Peggy] in this lawsuit”

We note that Hill moved to sever from cause number 12CV32, 231 plaintiff Tommy Earl Harris’s claims, alleging that Harris reneged on his settlement agreement. Hill described Harris as the only party left in the case with an active, pending claim against Hill. The order severing Harris’s claims was also signed August 26, 2016.

Our record does not show that, at the time of Peggy’s death in 2013, anyone implemented the procedures that event should have precipitated. *See* TEX. R. CIV. P. 151. Neither the dismissal order nor the summary judgment disposed of Peggy’s claims against Hill or included unequivocal language indicating finality. Therefore, those claims remain pending. *See Lehmann*, 39 S.W.3d at 205. Consequently, there is no final judgment in this cause. This court has no jurisdiction over this appeal.

DISPOSITION

We *dismiss* the appeal for *want of jurisdiction*.

JAMES T. WORTHEN
Chief Justice

Opinion delivered August 16, 2017.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

AUGUST 16, 2017

NO. 12-16-00203-CV

**EDNA NOBLES, WAYMOND NOBLES, MICHAEL MOORE,
JUNEQUA NOBLES, LAVATRICE DAVIS AND DIANA JACKSON,**

Appellants

V.

**WILLIAM L. HILL A/K/A BILL HILL INDIVIDUALLY,
AND D/B/A BILL HILL OIL & GAS PRODUCTION,**

Appellees

Appeal from the 123rd District Court
of Shelby County, Texas (Tr.Ct.No. 12CV32,231)

THIS CAUSE came to be heard on the appellate record and briefs filed herein and the same being considered, it is hereby ORDERED, ADJUDGED and DECREED that this appeal is **dismissed** for want of jurisdiction. It is further ORDERED that all costs of this appeal are hereby adjudged against Appellants, **EDNA NOBLES, WAYMOND NOBLES, MICHAEL MOORE, JUNEQUA NOBLES, LAVATRICE DAVIS** and **DIANA JACKSON**, for which execution may issue and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.