



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

IN RE: PURPORTED MECHANICAL
AND MATERIALMAN'S LIEN CLAIM
OF LIEN AGAINST PELLICANO
BUSINESS PARK, L.L.C.

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No. 08-16-00291-CV
Appeal from
County Court at Law No. 7
of El Paso County, Texas
(TC # 2012-DCV06341)

MEMORANDUM OPINION

This appeal is before the Court on its own motion to determine whether it should be dismissed for want of prosecution. Finding that Appellant, Rosa Serrano d/b/a The Lens Factory, has failed to file her brief, we dismiss the appeal for want of prosecution.

On October 18, 2017, the Court issued an order granting Appellant's fifth motion for an extension of time in which to file her brief. The order notified Appellant that the Court would not consider any additional extension motions. Despite that warning, Appellant filed a sixth extension based on her frivolous request for the reporter's record to be supplemented with a contempt hearing held on June 6, 2016. The Court had previously denied Appellant's request to supplement the record with this hearing because the Court does not have jurisdiction to review a contempt order in a direct appeal. Consequently, on November 15, 2017, the Court issued an order denying Appellant's request to extend the due date for her brief. The order specifically informed Appellant that the Court intended to dismiss the appeal for lack of jurisdiction. *See* TEX.R.APP.P. 38.8(a)(1).

Appellant responded by filing two motions requesting that we: (1) appoint appellate counsel to represent her in the pending civil appeals (cause numbers 08-16-00327-CV and 08-16-00291-CV); (2) recuse and transfer the appeal to the Third Court of Appeals; (3) suspend the criminal conviction for Medicaid fraud (cause number 08-17-00190-CR); and (4) abate the appeal and forward the appellate record to Appellant's attorney, the State Counsel for Offenders. We will consider whether the relief requested justifies allowing the appeal to continue despite Appellant's failure to file her brief.

Appellant first asks that counsel be appointed to represent her in this civil appeal from a take-nothing judgment on her claims against Pellicano Business Park. On April 3, 2017, the Court denied Appellant's request for appointed counsel. Appellant represented herself in the underlying civil proceedings, but she was represented by appointed counsel in connection with multiple contempt of court motions based on her alleged violations of a temporary injunction. The trial court found Appellant in contempt of court and ordered her confined in jail as punishment for those violations. In this direct appeal, Appellant may not raise any complaints regarding the contempt proceedings and contempt orders because we do not have jurisdiction to address them. *Chavira v. Quarry Hills Mgmt., LLC*, 458 S.W.3d 561, 565-66 (Tex.App.--El Paso 2014, pet. denied). A contempt order involving incarceration must be reviewed through an application for writ of habeas corpus. *Id.*

The Sixth Amendment's right to counsel does not apply to civil cases. *See Turner v. Rogers*, 564 U.S. 431, 442, 131 S.Ct. 2507, 2516, 180 L.Ed.2d 452 (2011); *Harris v. Civil Service Commission for Municipal Employees of the City of Houston*, 803 S.W.2d 729, 731 (Tex.App.--Houston [14th Dist.] 1990, no pet.)("Neither the Texas nor United States Constitution guarantees a right to counsel in a civil suit."). Further, the Texas Supreme Court has never recognized a

general right to counsel in civil cases. See *Travelers Indemnity Company of Connecticut v. Mayfield*, 923 S.W.2d 590, 594 (Tex. 1996). The district and county courts are authorized by statute to appoint counsel for an indigent party in a civil case. See TEX.GOV'T CODE ANN. § 24.016 (West 2004); TEX.GOV'T CODE ANN. § 25.0004(c)(West 2004); TEX.GOV'T CODE ANN. § 26.049. The appointment of counsel under Section 24.016 is limited to “exceptional circumstances” in which “the public and private interests at stake are such that the administration of justice may best be served by appointing a lawyer to represent an indigent civil litigant.” *Coleman v. Lynaugh*, 934 S.W.2d 837, 839 (Tex.App.--Houston [1st Dist.] 1996, no writ), quoting *Mayfield*, 923 S.W.2d at 594. We doubt that these provisions apply to an appellate court, but we will for the sake of argument assume that they do in order to address Appellant’s motion. We have examined the record and do not find anything to indicate that this case involves the type of exceptional circumstances which would justify the appointment of counsel. Accordingly, we deny Appellant’s requests to appoint appellate counsel.

Appellant also represents in one of her motions that the State Counsel for Offenders has agreed to represent her in these two civil appeals, and she asks that we abate the appeal and forward the appellate record to the SCFO so that her brief can be prepared. Appellant has not provided the Court with any evidence to support her claim that the SCFO has agreed to represent her. We delayed ruling on these motions to give the SCFO an opportunity to file an entry of appearance, but none has been filed. Accordingly, we deny Appellant’s requests to abate the appeal and forward the record to the SCFO.

Appellant also asks that all the members of the Court recuse themselves from the case and transfer the appeal to the Third Court of Appeals. The Court previously denied Appellant’s motion

requesting recusal and transfer of the appeal. Appellant's motion does not present a basis for reconsideration of that ruling.

Appellant further requests in her motion that we "release" or "suspend" her criminal conviction for Medicaid fraud because she has filed a case in civil court to challenge that conviction. Appellant's conviction for Medicaid fraud is not part of this civil appeal, and we are not aware of any authority for "releasing" or "suspending" her conviction. For these reasons, we deny all relief requested in Appellant's motions filed on November 27, 2017 and December 4, 2017. Further, we find that Appellant has not established any grounds for continuing the appeal.

The Court has given Appellant every opportunity to prosecute her appeal from the trial court's final judgment entered on September 15, 2016. Appellant is an experienced *pro se* litigant at both the trial and appellate level, and she has demonstrated a familiarity with the Rules of Appellate Procedure. Even after being advised that the Court would not consider any additional extension requests and the Court intended to dismiss her appeal for want of prosecution, Appellant did not file her brief. Further, she has repeatedly delayed this appeal while using the case as a platform for challenging the contempt orders and criminal convictions. As we have informed Appellant, we do not have jurisdiction to review the contempt orders in this direct appeal. Appellant is certainly aware that her criminal convictions are the subject of a separate appeal. It is now evident that Appellant does not intend to file her brief. Accordingly, we dismiss the appeal for want of prosecution. *See* TEX.R.APP.P. 38.8(a)(1), 42.3(b), (c).

December 20, 2017

ANN CRAWFORD McCLURE, Chief Justice

Before McClure, C.J., Rodriguez, and Palafox, JJ.