

Order filed August 11, 2011



In The

Eleventh Court of Appeals

No. 11-10-00007-CV

LINDA S. NEIDERT, Appellant

V.

SUSAN J. COLLIER AND JOHN P. SEARLS, Appellees

On Appeal from the 70th District Court

Ector County, Texas

Trial Court Cause No. A-125,758

ORDER

Linda S. Neidert filed a notice of appeal from a judgment entered in this case in favor of the plaintiffs, Susan J. Collier and John P. Searls. After submission of this case, it became apparent to this court that the judgment was not a final, appealable judgment. Consequently, we abate the appeal pursuant to TEX. R. APP. P. 27.2 to permit the trial court to render a final judgment.

Except for "a few mostly statutory exceptions," this court's jurisdiction is limited to appeals from final judgments. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001).

We determine whether a judgment is a final, appealable judgment based on the language in the judgment and the record of the case. *Id.* A judgment is final and appealable if it disposes of all parties and all claims in the case. *Id.*

In their petition, the plaintiffs sought declaratory relief, asserted a cause of action for breach of contract, requested damages for the breach of contract claim, and sought attorney's fees. The plaintiffs filed a Motion for Summary Judgment as to Liability "on their declaratory judgment causes of action." The plaintiffs did not seek summary judgment on their breach of contract claim. The judgment from which Neidert appeals is entitled "FINAL JUDGMENT," but it does not dispose of all parties and all claims. In the judgment, the trial court granted the "Plaintiffs' Motion for Summary Judgment as to Liability" regarding declaratory relief and also awarded attorney's fees. Nothing in the record shows that the breach of contract claim has been disposed of or severed.

We hold that, although the judgment may purport to be final, it is not; it does not dispose of all parties and all claims. Because the trial court has not disposed of all the claims before it, we do not have jurisdiction to entertain an appeal at this time. We abate the appeal pursuant to Rule 27.2 so that the trial court may render a final judgment. The trial court is instructed to do so on or before August 18, 2011, and the court reporter and district clerk are ordered to file any supplemental records relating to the entry of a final judgment within seven days after entry of such judgment by the trial court.

The appeal is abated.

PER CURIAM

August 11, 2011

Panel consists of: Wright, C.J.,
McCall, J., and Hill, J.¹

¹John G. Hill, Former Justice, Court of Appeals, 2nd District of Texas at Fort Worth, sitting by assignment.