

Order filed March 21, 2013



In The

# **Eleventh Court of Appeals**

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No. 11-13-00011-CV

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**M&M ELEVATOR COMPANY, LTD., Appellant**

**V.**

**OILFIELD FISHING & RENTAL, L.L.C., Appellee**

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**On Appeal from the 244th District Court**

**Ector County, Texas**

**Trial Court Cause No. C-128,532-C**

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## **ORDER**

M&M Elevator Company, Ltd. filed a notice of appeal after the trial court entered an order granting Oilfield Fishing & Rental, L.L.C.'s (OFR) motion for summary judgment against M&M Elevator. In the summary judgment, the trial court ordered M&M to pay the sums of \$197,903.12 and \$139,698.79 for legal services provided to OFR by two law firms. Upon reviewing the clerk's record, this court notified the parties that it did not appear to this court that the trial court had entered a final, appealable judgment. We requested a response but have not received a written response.

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.*

The record in this case shows that OFR filed a cross-claim against M&M Elevator and M&M Fishing Tool Rental, Inc. The record also shows that the trial court severed OFR's claims against both M&M Elevator and M&M Fishing Tool from the original cause of action into cause no. C-128,532-C. In its motion for summary judgment, OFR requested summary judgment against M&M Elevator only, and the trial court's summary judgment order related only to M&M Elevator, not to M&M Fishing Tool. Thus, the order does not address the claims against M&M Fishing Tool, and nothing in the record shows that OFR's claims against M&M Fishing Tool have been nonsuited, severed from trial court cause no. C-128,532-C, or otherwise finally disposed of by the trial court. Consequently, there is not yet a final, appealable judgment in this case.

We hold that, although the judgment against M&M Elevator may purport to be final, it is not. Because OFR's claims against M&M Fishing Tool in trial court cause no. C-128,532-C have not been disposed of, we do not have jurisdiction to entertain an appeal from that cause at this time. Consequently, we abate the appeal pursuant to TEX. R. APP. P. 27.2 to permit the trial court to render a final judgment. If a final, appealable judgment has not been entered by April 15, 2013, this court may dismiss this appeal. The court reporter and district clerk are ordered to file in this court any supplemental records relating to the entry of a final judgment on or before April 26, 2013.

The appeal is abated.

PER CURIAM

March 21, 2013

Panel consists of: Wright, C.J.,  
McCall, J., and Hill.<sup>1</sup>

Willson, J., not participating.

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