

Dismiss and Opinion Filed July 19, 2016



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-00575-CV

JIGNESH B. PATEL, Appellant

V.

**RITESH M. PATEL, HARISH N. PATEL, JALYANBAPA, LLC AND DEEMA'S, LLC,
Appellees**

**On Appeal from the 429th Judicial District Court
Collin County, Texas
Trial Court Cause No. 429-03175-2015**

MEMORANDUM OPINION

Before Chief Justice Wright, Justice Lang-Miers, and Justice Stoddart
Opinion by Chief Justice Wright

Before the Court is Jignesh B. Patel's petition for permissive appeal regarding the trial court's interlocutory order dismissing appellant's breach of contract claim against Ritesh M. Patel and Harish N. Patel. Appellant seeks permission to appeal two issues: (1) whether appellant's amended petition prohibited the trial court from hearing the motion to dismiss, and (2) whether the trial court could consider a contract attached to a motion to dismiss a breach of contract claim. We deny appellant's petition and dismiss the appeal for want of jurisdiction.

Background

In August 2006, the parties executed a company agreement for Deema's LLC, a company for which the parties were members and managers. Later, in 2015, appellant filed a wrongful conduct suit against appellees, as individuals, alleging appellees' wrongful conduct as members

of Deema's breached the company agreement. Appellees filed a rule 91a motion to dismiss asserting that section 101.114 of the Texas Business and Commerce Code precludes liability of a member or manager for the debts of a limited liability company. Appellees attached the company agreement to their rule 91a motion. Subsequently, appellant amended his petition and re-filed his first amended petition suing Deema's and appellees as managers of Deema's. Appellant identified the agreement in his petition, but did not attach the agreement. Appellees did not amend their rule 91a motion to dismiss. Thereafter, the trial court signed an order granting appellees' motion to dismiss.

Appellant filed a motion to reconsider, which the trial court denied. Later, appellant sought permission from the trial court to appeal the order denying the motion to reconsider questioning whether the trial court could consider the contract attached to the motion to dismiss. Appellant also requested that the trial court amend the order denying reconsideration to allow appellant to file an interlocutory appeal. The trial court granted permission to appeal and amended the order denying the motion to reconsider, stating:

The basis of this appeal is a difference of opinion as to the application of Tex. R. Civ. P. 91[a]. An immediate appeal on this issue may materially advance the ultimate termination of this case by clarifying the responsibility the Defendants Ritesh Patel and Harish Patel, in their capacity as managers and members of Deema's LLC, owed to Plaintiff.

This petition for permissive appeal followed.

Discussion

Generally, a party may not appeal an interlocutory order. *Bally Total Fitness Corp. v. Jackson*, 53 S.W.3d 352, 352 (Tex. 2001). But, some statutes authorize interlocutory appeals in limited situations; such statutes are strictly construed. *See State Fair of Tex. v. Iron Mountain Info. Mgmt., Inc.*, 299 S.W.3d 261, 262–63 (Tex. App.—Dallas 2009, no pet.). Section 51.014 lists certain types of civil interlocutory orders that may be appealed, as well as permitting an

interlocutory appeal if (1) the order being appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion, and (2) an immediate appeal from the order may materially advance the ultimate termination of the litigation. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(d), (f) (West 2015); *see also* TEX. R. APP. P. 28.3(d)(4) (providing that “the petition must . . . argue clearly and concisely why the order to be appealed” meets the requirements of § 51.014(d)).

We do not have jurisdiction over this appeal because the trial court did not make a substantive ruling on the specific legal question presented on the petition for permissive appeal. *See Double Diamond Del., Inc. v. Walkinshaw*, 05-13-00893-CV, 2013 WL 5538814, at *2 (Tex. App.—Dallas Oct. 7, 2013, no pet.) (mem. op.) (“Inherent in these jurisdictional requirements is that the trial court make a substantive ruling on the specific legal question presented on appeal.”). The trial court did not state a specific basis for its rulings on the motion to dismiss or the motion to reconsider. *See Colonial Cty. Mut. Ins. Co. v. Amaya*, 372 S.W.3d 308, 310–11 (Tex. App.—Dallas 2012, no pet.) (a ruling is substantive if the trial court’s order specifies the basis for its ruling). Moreover, the trial court’s order does not identify the controlling legal issues. *See* TEX. R. CIV. P. 168 (“The permission must identify the controlling question of law.”). The trial court’s order merely states that the basis of this appeal is a difference of opinion as to the application of Rule 91a.

Further, even if the trial court specified a basis for its ruling, appellant did not prove that substantial grounds for difference of opinion exist for the issues on appeal. Appellant outlined the parties’ disagreement regarding Rule 91a to prove that substantial grounds for difference of opinion existed, but the parties’ disagreement is not enough. *See King-A Corp. v. Wehling*, No. 13-13-00100-CV, 2013 WL 1092209, at *3 (Tex. App.—Corpus Christi Mar. 14, 2013, no pet.); *see also, Workers’ Comp. Sols. v. Tex. Health, L.L.C.*, No. 05-15-01504-CV, 2016 WL 945571,

at *1 (Tex. App.—Dallas Mar. 14, 2016, no pet.) (substantial grounds for disagreement exist when there is disagreement among different courts).

Finally, resolving the issues appellant presents on appeal will not materially advance the ultimate termination of the litigation. Appellant amended his petition by adding Deema's, and appellees concede that Deema's ultimately has the responsibility for any breach of contract. Appellee may continue to pursue his action against Deema's and the remaining issues in that case will be unaffected by the issues brought up on this petition for permissive appeal. *See Estate of Fisher*, 421 S.W.3d 682, 684 (Tex. App.—Texarkana 2014, no pet.) (issue materially advances ultimate termination of the litigation if remaining issues will be controlled by the determination of the issue brought up in the petition for permissive appeal).

Accordingly, we deny the petition and dismiss the appeal for want of jurisdiction. *See* Tex. R. App. P. 28.3(j), 43.2(f).

/Carolyn Wright/
CAROLYN WRIGHT
CHIEF JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

JIGNESH B. PATEL, Appellant

No. 05-16-00575-CV V.

RITESH M. PATEL, HARISH N. PATEL,
JALYANBAPA, LLC AND DEEMA'S,
LLC, Appellees

On Appeal from the 429th Judicial District
Court, Collin County, Texas

Trial Court Cause No. 429-03175-2015.

Opinion delivered by Chief Justice Wright.

Justices Lang-Miers and Stoddart
participating.

In accordance with this Court's opinion of this date, this appeal is **DISMISSED**.

It is **ORDERED** that appellees RITESH M. PATEL, HARISH N. PATEL,
JALYANBAPA, LLC AND DEEMA'S, LLC recover their costs of this appeal from appellant
JIGNESH B. PATEL.

Judgment entered July 19, 2016.