

Dismissed; Opinion Filed September 26, 2017.



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

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No. 05-17-00086-CV

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**MOLLY BRAUN, Appellant**  
V.  
**JOHN HALEY, Appellee**

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**On Appeal from the 298th Judicial District Court**  
**Dallas County, Texas**  
**Trial Court Cause No. DC-16-10877**

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**MEMORANDUM OPINION**

Before Justices Francis, Myers, and Whitehill  
Opinion by Justice Francis

Molly Braun brings this interlocutory appeal complaining that her motion to dismiss under the Citizens Participation Act was denied by operation of law. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 27.008, 51.014(a)(12) (West 2015 & Supp. 2016). For the same reasons expressed in our opinion in a companion case issued on this date, we conclude we lack jurisdiction over this appeal because there is no appealable order. *See Braun v. Gordon*, No. 05-17-00176-CV, slip op. at 2 (Tex. App.—Dallas Sept. 26, 2017, no pet. h.).

John Haley sued Braun for defamation and other causes of action. On September 22, 2016, Braun timely filed a motion to dismiss under the Citizens Participation Act and served Haley the same day. Except in circumstances not applicable here, a hearing under the Act had to occur no later than 90 days after service of the motion, or December 21, 2016. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 27.004(a), (c). Braun set the motion for hearing on March 10, 2017,

a date that is almost three months after the deadline to hold the hearing. There was no hearing on the motion, and the trial court never expressly ruled on the motion.<sup>1</sup> On January 25, 2017, Braun filed her notice of appeal. As she did in *Gordon*, Braun argues her unheard motion was overruled by operation of law.

In *Gordon*, this Court considered the language of the Act and concluded a motion to dismiss cannot be construed to be overruled by operation of law when there has been no hearing. *See Gordon*, No. 05-17-00176-CV, slip op. at 4 (explaining that under statutory framework, thirty-day deadline before motion is deemed overruled by operation of law runs only from date of hearing on motion, and when no hearing held, motion not denied by operation of law). We concluded that when the trial court does not expressly deny the motion to dismiss and the motion to dismiss is not denied by operation of law because there was no hearing, then no order exists that is subject to interlocutory appeal. *Id.*

We reach the same conclusion here and determine we have no jurisdiction over this interlocutory appeal. And, for the same reasons expressed in *Gordon*, we reject Braun’s request to convert this interlocutory appeal to a petition for writ of mandamus. *Id.* at 6–7.

We dismiss the appeal for want of jurisdiction.

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/Molly Francis/  
MOLLY FRANCIS  
JUSTICE

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<sup>1</sup> As in *Gordon*, Braun asserts she made numerous attempts to secure a timely hearing date, but the trial court was unable to provide one within the statutorily-required period and was also unwilling to refer the motion to an associate judge. These assertions are unsupported by the record; consequently, we do not consider them. *See Unifund CCR Partner v. Weaver*, 262 S.W.3d 796, 797 (Tex. 2008) (per curiam). Moreover, Haley states in his brief that there is “no record of any contact by [Braun] with the trial court regarding the alleged hearing dates, the unavailability of hearing dates, or any attempts to contact Appellee’s counsel to set the hearing as required” by the statute and local rules. *See TEX. R. APP. P. 38.1* (“In a civil case, the court will accept as true the facts stated unless another party contradicts them.”)



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

**JUDGMENT**

MOLLY BRAUN, Appellant

No. 05-17-00086-CV      V.

JOHN HALEY, Appellee

On Appeal from the 298th Judicial District  
Court, Dallas County, Texas

Trial Court Cause No. DC-16-10877.

Opinion delivered by Justice Francis;

Justices Myers and Whitehill participating.

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

It is **ORDERED** that appellee John Haley recover his costs of this appeal from appellant Molly Braun.

Judgment entered this 26th day of September, 2017.