

Vacate t/c order and Dismiss; Opinion Filed May 31, 2018.



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01405-CV

JOHN C. PAPPAS AND WASHBIZ, INC., Appellants
V.
SHAMOUN & NORMAN, LLP, Appellee

On Appeal from the 193rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-08420

MEMORANDUM OPINION

Before Justices Lang-Miers, Myers, and Boatright
Opinion by Justice Myers

This is an appeal from a summary judgment granted against appellants John C. Pappas and Washbiz, Inc., and in favor of appellee Shamoun and Norman, LLP. In two issues, appellants contend (1) the trial court never acquired subject matter jurisdiction over Shamoun and Norman's claims, thereby resulting in a void judgment; and (2) the trial court erred by granting summary judgment in Shamoun and Norman's favor because its summary judgment evidence was legally insufficient and because an affidavit was conclusory. We vacate the trial court's order granting summary judgment and dismiss the cause for want of jurisdiction.

BACKGROUND AND PROCEDURAL HISTORY

On December 23, 2011, appellants John C. Pappas and Washbiz, Inc. filed an original petition against Wash Technologies of America Corporation and Jon K. Bangash (collectively referred to as "Wash Tech"). The appellants' petition was docketed as cause number DC-11-

16090 in the 193rd Judicial District Court of Dallas County, Texas (collectively referred to as the “Bangash case”). On July 12, 2013, appellants hired appellee Shamoun and Norman, LLP, to represent them in the Bangash case. On March 22nd through 30th of 2016, the Bangash case was tried before a jury, which found in favor of appellants on all issues and awarded appellants actual and exemplary damages. On April 15, 2016, the trial court signed a final judgment in favor of appellants that also awarded them reasonable and necessary attorney’s fees in the total amount of \$780,061.72. On May 11, 2016, Wash Tech filed a motion for new trial, which the court denied on May 31, 2016.

Shamoun and Norman filed a motion to withdraw as counsel for appellants, which the trial court granted on June 2, 2016. Shamoun and Norman then attempted to intervene in the Bangash case. Their “Original Petition In Intervention,” filed on June 6, 2016, asserted claims against appellants for breach of contract and suit on a sworn account. Appellants filed a motion to strike the petition in intervention on June 22, 2016. On July 11, 2016, the trial court signed an “Agreed Order of Severance,” stating that the parties had indicated to the court they “have reached an agreement regarding severance in this matter,” and that the court had considered their request that the intervenor’s pending claims against appellants be “severed from the above-styled and numbered cause.” The court ordered Shamoun and Norman’s pending claims to be severed and that they be placed in a separate and distinct cause number. The trial court severed the intervention without setting aside the April 15, 2016 final judgment, and the intervention was assigned a new cause number (DC-16-08420). It remained before the 193rd Judicial District Court.

Thereafter, on August 3, 2016, Shamoun and Norman moved for summary judgment on its claims against appellants. After filing an original answer and a reply to Shamoun and Norman’s summary judgment motion, appellants objected to the propriety and sufficiency of Shamoun and Norman’s summary judgment evidence. On September 2, 2016, the trial court granted Shamoun

and Norman's summary judgment motion, awarding Shamoun and Norman damages in the amount of \$661,093.12, and attorney's fees in the amount of \$15,923.28. Appellants filed a motion for new trial, which was overruled by operation of law. This appeal followed.

DISCUSSION

In their first issue, appellants argue the trial court in the Bangash case (cause DC-11-16090) never acquired subject matter jurisdiction over Shamoun and Norman's claims; therefore, the trial court in the present case (cause DC-16-08420) did not have subject matter jurisdiction, resulting in the entry of a void judgment. Appellants argue, in other words, that because Shamoun and Norman's intervention was filed post-judgment, and because appellants' judgment against Wash Tech was never set aside, the trial court never acquired subject matter jurisdiction over Shamoun and Norman's claims. Thus, the trial court's order of severance as to Shamoun and Norman's claims against appellants was void.

Only parties of record may exercise the right of appeal once a final judgment has been entered. *Gore v. Peck*, 191 S.W.3d 927, 928 (Tex. App.—Dallas 2006, no pet.); *Preston v. Am. Eagle Ins. Co.*, 948 S.W.2d 18, 20 (Tex. App.—Dallas 1997, no writ). Any non-party may intervene by filing a pleading, subject to being stricken by the court for sufficient cause on the motion of any party, but the petition in intervention must be filed before judgment is rendered. *See First Alief Bank v. White*, 682 S.W.2d 251, 252 (Tex. 1984); *Gore*, 191 S.W.3d at 928; *Malone v. Hampton*, 182 S.W.3d 465, 468 (Tex. App.—Dallas 2006, no pet.). If the petition in intervention is filed after judgment, the intervenor does not become a party on the date of filing. *Gore*, 191 S.W.3d at 928. Furthermore, if the petition in intervention is filed after judgment, it may not be considered unless and until the judgment has been set aside. *First Alief Bank*, 682 S.W.3d at 252; *In re Baby Girl S.*, 343 S.W.3d 317, 317 (Tex. App.—Dallas 2011, no pet.); *Gore*, 191 S.W.3d at 928; *Malone*, 182 S.W.3d at 468.

The notice of appeal is due thirty days from the date of judgment or, if a timely post-judgment motion is filed, within ninety days of the date of judgment. *See* TEX. R. APP. P. 26.1(a). But a non-party may not file a motion for new trial unless the non-party successfully intervenes. *In re Baby Girl S.*, 343 S.W.3d at 317. Hence, “[t]o successfully intervene post-judgment, the plea in intervention must be filed and the judgment must be set aside within thirty days of the date of judgment.” *In re Baby Girl S.*, 343 S.W.3d at 317; *see also Bennetsen v. Mostyn Law Firm*, No. 01–14–00184–CV, 2015 WL 1778356, at *2 (Tex. App.—Houston [1st Dist.] Apr. 16, 2015, no pet.) (mem. op.); *Ivarra v. Am. GI Forum of United States, Inc.*, No. 03–12–00580–CV, 2013 WL 1955853, at *1 (Tex. App.—Austin May 10, 2013, no pet.) (mem. op.). “Judicial action taken after the expiration of the court’s jurisdiction is a nullity, and any orders signed outside the court’s plenary jurisdiction are void.” *Malone*, 182 S.W.3d at 468; *see also Douglas-Peters v. Choe, Holen, Yoo & Burchfiel, P.C.*, No. 05–10–00208–CV, 2010 WL 4946612, at *1 (Tex. App.—Dallas Dec. 7, 2010, no pet.) (mem. op.). We also note the longstanding principle that subject matter jurisdiction cannot be conferred on a court by consent or waiver. *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 75 (Tex. 2000).

Shamoun and Norman filed their plea in intervention after the April 15, 2016 final judgment had been signed, and the final judgment was not set aside. We have held that a plea in intervention is untimely if it is filed after judgment and that it may not be considered unless and until the judgment is set aside. *Gore*, 191 S.W.3d at 928. It is true, as Shamoun and Norman point out, that courts always have jurisdiction to determine their own jurisdiction. *See In re Lazy W Dist. No. 1*, 493 S.W.3d 538, 544 (Tex. 2016). But the trial court in this case did not have the authority to consider Shamoun and Norman’s untimely petition in intervention without first setting aside the final judgment, which it did not do. *See Gore*, 191 S.W.3d at 928. Therefore, Shamoun and Norman never became a party, and the agreed order of severance was void.

We sustain Pappas’s first issue, vacate the September 2, 2016 order granting summary judgment, and dismiss the cause for want of jurisdiction. *See Duggan v. Tanglewood Villa Owners Ass’n*, No. 05–16–00300–CV, 2017 WL 2610032, at *2, 3 (Tex. App.—Dallas June 16, 2017, no pet.) (mem. op.) (“If the trial court lacked jurisdiction, the appellate court has jurisdiction only to set aside the judgment and dismiss the cause.”). Because we reach this conclusion, we need not address appellants’ second issue.

/Lana Myers/
LANA MYERS
JUSTICE

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

JUDGMENT

JOHN C. PAPPAS AND WASHBIZ, INC.,
Appellant

No. 05-16-01405-CV V.

SHAMOUN & NORMAN, LLP, Appellee

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Court, Dallas County, Texas
Trial Court Cause No. DC-16-08420.
Opinion delivered by Justice Myers.
Justices Lang-Miers and Boatright
participating.

In accordance with this Court's opinion of this date, we **VACATE** the September 2, 2016 order granting summary judgment and **DISMISS** the cause for lack of subject matter jurisdiction. It is **ORDERED** that each party shall bear its own costs in this appeal.

Judgment entered this 31st day of May, 2018.