

DISMISS and Opinion Filed April 20, 2021



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

No. 05-20-00755-CV

**SAM C. TAMBORELLO, Appellant
V.
TOWN OF HIGHLAND PARK, TEXAS, Appellee**

**On Appeal from the 160th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-19-06613**

MEMORANDUM OPINION

Before Chief Justice Burns, Justice Goldstein, and Justice Smith
Opinion by Chief Justice Burns

Under Texas law, an appeal may be taken from a final judgment that disposes of all parties and claims or an interlocutory order as permitted by statute. *See Jack B. Anglin Co., Inc. v. Tipps*, 842 S.W.2d 266, 272 (Tex. 1992). The appeal here challenges the trial court's order denying appellant's motion to reconsider the dismissal of his claims against appellee. As reflected in the record, the underlying suit was filed by appellant against appellee and several other parties. The claims against appellee were dismissed pursuant to Texas Rule of Civil Procedure 91a, but they were not severed from the remaining claims. *See* TEX. R. CIV. P. 91a

(authorizing dismissal of baseless causes of action); *Aviation Composite Techs., Inc. v. CLB Corp.*, 131 S.W3d 181, 187 n.5 (Tex. App.—Fort Worth 2004, no pet.) (“[A] trial court may sever dismissed claims from remaining claims in order to render an otherwise interlocutory judgment final and appealable.”).

Because the appealed order did not dispose of all parties and claims and no statute authorizes an appeal from an interlocutory order granting a rule 91a motion to dismiss, we questioned our jurisdiction over the appeal. *See In re Farmers Tex. Cty. Mut. Ins. Co.*, 604 S.W.3d 421, 429 (Tex. App.—San Antonio 2019, orig. proceeding). Although we directed appellant to file a letter brief addressing our concern and cautioned that failure to do so by March 5, 2021 could result in dismissal of the appeal without further notice, appellant failed to comply. Accordingly, as the record before us does not demonstrate our jurisdiction, we dismiss the appeal. *See* TEX. R. APP. P. 42.3(a).

/Robert D. Burns, III/

ROBERT D. BURNS, III
CHIEF JUSTICE

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

JUDGMENT

SAM C. TAMBORELLO, Appellant

No. 05-20-00755-CV V.

TOWN OF HIGHLAND PARK,
TEXAS, Appellee

On Appeal from the 160th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-19-06613.
Opinion delivered by Chief Justice
Burns, Justices Goldstein and Smith
participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal.

We **ORDER** that appellee Town of Highland Park, Texas recover its costs, if any, of this appeal from appellant Sam C. Tamborello.

Judgment entered April 20, 2021.