

Dismiss and Opinion Filed August 11, 2022



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

No. 05-21-00173-CV

**TAMI DONALD, JERRY MOORE, AND SUMMIT SPRING WATER
COMPANY, INC., Appellants**

V.

**BMR DISTRIBUTING, INC., RHONE WATER COMPANY INC. D/B/A
FROSTY'S WATER, BRIAN ROSE, NORTH TEXAS MOUNTAIN
VALLEY WATER CORP., AND WATER EVENT GULF COAST, LLC,
Appellees**

**On Appeal from the 44th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-08127**

MEMORANDUM OPINION

Before Justices Partida-Kipness, Pedersen, III, and Nowell
Opinion by Justice Nowell

Appellants Tami Donald, Jerry Moore, and Summit Spring Water Company, Inc. appeal the trial court's December 17, 2020 document titled "Final Judgment" (December 2020 Order) in their lawsuit against appellees BMR Distributing, Inc., Rhone Water Company Inc. d/b/a Frosty's Water, Brian Rose, North Texas Mountain Valley Water Corp., and Water Event Gulf Coast, LLC. We dismiss the appeal for lack of jurisdiction.

Generally, appellate courts have jurisdiction over final judgments and certain interlocutory orders as permitted by statute. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). “A judgment is final for purposes of appeal if it disposes of all pending parties and claims in the record, except as necessary to carry out the decree.” *Id.*

While the December 2020 Order purports to be a final judgment, it fails to dispose of two defendants in the lawsuit. Because the December 2020 Order does not dispose of all parties and claims, we questioned whether it was a final judgment. Pursuant to supreme court authority, we abated the appeal to permit the trial court to clarify the December 2020 Order. *See Bella Palma, LLC v. Young*, 601 S.W.3d 799, 801 (Tex. 2020) (“If the appellate court is uncertain about the intent of the order, it can abate the appeal to permit clarification by the trial court.”). The trial court replied in its “Order Clarifying December 17, 2020 Final Judgment” and stated the December 2020 Order “is not a final judgment as there are two parties, BMR Distributing and Rhone Water, Defendants, against which Plaintiff’s [sic] claims can continue.”

Having received the trial court’s Clarifying Order stating the December 2020 Order does not dispose of all parties to this lawsuit and is not a final judgment, we

conclude we lack jurisdiction over the appeal. Accordingly, we dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a).

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/Erin A. Nowell//
ERIN A. NOWELL
JUSTICE



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

JUDGMENT

TAMI DONALD, JERRY MOORE,
AND SUMMIT SPRING WATER
COMPANY, INC., Appellants

No. 05-21-00173-CV V.

BMR DISTRIBUTING, INC.,
RHONE WATER COMPANY INC.
D/B/A FROSTY'S WATER, BRIAN
ROSE, AND NORTH TEXAS
MOUNTAIN VALLEY WATER
CORP., AND WATER EVENT
GULF COAST, LLC, Appellees

On Appeal from the 44th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-18-08127.
Opinion delivered by Justice Nowell.
Justices Partida-Kipness and
Pedersen, III participating.

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

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 11th day of August 2022.