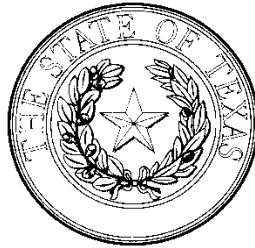


Opinion issued July 7, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-10-00329-CV

ANTHONY E. GILL, Appellant
V.
BOYD DISTRIBUTION CENTER, Appellee

**On Appeal from the 412th District Court
Brazoria County, Texas
Trial Court Case No. 15846**

MEMORANDUM OPINION

Appellant Anthony E. Gill appeals from a March 15, 2010 letter from the Judge of the 412th Judicial District Court of Brazoria County, which Gill

characterized as an appealable order under the turnover statute. Because we conclude that letter is not a final appealable order, we dismiss this appeal.

BACKGROUND

Gill secured a March 14, 2005 default judgment against Boyd Distributing Center. On February 23, 2010, Gill filed in the 23rd District Court of Brazoria County a “Motion to Enforce Judgment” in which he “seek[s] aid from th[e] Court in obtaining satisfaction on the judgment . . . pursuant to Tex. Civ. Prac. & Rem. Code sec. 31.002.” That motion states:

Necessary to enforcing this Court’s judgment issued on 3-14-05 against Boyd Distribution Center, Gill request[s] a hearing and that findings of fact and conclusions of law be made on the following issues.

- 1) Whether misnomer occurred?
- 2) Whether Gill is entitled to appointment of receiver under Tex. Bus. & C. Code Sec. 17.59?
- 3) Whether Boyd did function and make decisions through agents legally?
- 4) Who is successor in interest since Boyd has changed its name?
- 5) Whether TDCH is in possession/control of property owned or operated by Boyd?

It is prayed this Court will conduct a hearing, resolving issues necessary for enforcement of its judgment.

On March 15, 2011, the trial judge sent a letter to Gill stating:

While I agree with you that the Court can enter Orders under Civil Practice and Remedies Code 31.002 and 17.59 of the Bus. & Comm. Code, it is the Court’s opinion that neither of these provisions allows the Court to do what you ask, that being to conduct an

evidentiary hearing to reform or modify a prior judgment or to conduct post judgment discovery.

Gill filed a notice of appeal asserting that the judge's letter "communicated the opinion of the court as to provisions of the turnover statute, thus it's an appealable order." *See, e.g., Burns v. Miller, Hiersche, Martens & Hayward, P.C.*, 909 S.W.2d 505, 506 (Tex. 1995) (holding that a turnover order is a final, appealable judgment).

In his brief here, Gill argues that the trial court abused its discretion by ruling "it is the Court's opinion that neither of these provisions allows the Court to do what you ask, that being to conduct an evidentiary hearing to reform or modify a prior judgment or to conduct post judgment discovery." Specifically, Gill argues that (1) it was "unreasonable for Judge Denman to assume or allude that Gill's Motion to Enforce Judgment asked to 'conduct an evidentiary hearing to reform or modify a prior judgment,'" and (2) that Judge Denman "failed to properly analyze the law, plainly abusing discretion" by "stipulating in the court's opinion that 31.002 did not allow post judgment discovery." He requests that this Court order the trial court "to conduct an evidentiary hearing upon Gill's Motion to Enforce Judgment and make findings of fact and conclusions of law on each of the issues therein presented."

ANALYSIS

Section 31.002, the section under which Gill purports to seek relief, provides:

(a) A judgment creditor is entitled to aid from a court of appropriate jurisdiction through injunction or other means in order to reach property to obtain satisfaction on the judgment if the judgment debtor owns property, including present or future rights to property, that:

- (1) cannot readily be attached or levied on by ordinary legal process; and
- (2) is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.

.....

TEX. CIV. PRAC. & REM. CODE § 31.002(a).

Implicit in Gill’s argument is the premise that his “Motion for Enforcement” qualified as a proper application for a turnover order under Section 31.002 and that the court denied relief on that application. But Gill’s motion does not make any request for a turnover order. Nor does it even allege that Boyd Distributing Center has a present or future right to property that cannot be readily attached or levied by ordinary legal process, or identify property that is not exempt from attachment for the satisfaction of liabilities. While Gill does request an evidentiary hearing and findings of fact and conclusion of law, his motion does not tie those requests to the underlying basis for a turnover order—the existence of nonexempt property that is not subject to attachment by other legal means. Given this, we decline to interpret the trial judge’s letter as a denial of an application for a turnover order. By stating

its agreement that “the Court can enter Orders under Civil Practice and Remedies Code 31.002,” the trial court in fact recognized that it has jurisdiction over turnover applications, but expressed the view that Gill’s requested relief did not comport with section 31.002.

Because we hold that the letter from which Gill purports to appeal under section 31.002 of the Texas Civil Practice and Remedies Code is not a final and appealable turnover order, we lack jurisdiction over this appeal. *E.g., Gregory v. Foster*, 35 S.W.3d 255, 256-57 (Tex. App.—Texarkana 2000, no pet.).

CONCLUSION

We dismiss Gill’s appeal for want of jurisdiction. TEX. R. APP. P. 42.3.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Sharp and Brown.