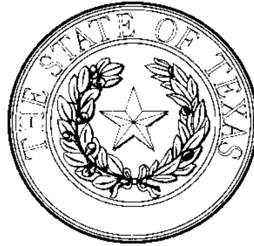
**Opinion issued October 6, 2011**




**In The**

**Court of Appeals**

**For The**

**First District of Texas**

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**NO. 01-11-00061-CV**

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**GEORGE ACKEL, III, ALANA ACKEL TALLO, ADAM ACKEL, AND ALEXANDER ACKEL, Appellants**

**V.**

**JERILYN LEE ACKEL, Appellee**

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**On Appeal from the Probate Court Number 1**
**Harris County, Texas**
**Trial Court Case No. 393941**

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**MEMORANDUM OPINION**

In this attempted appeal from an interlocutory order, appellants, George Ackel, III, Alana Ackel Tallo, Adam Ackel, and Alexander Ackel (collectively, "the Ackels"), challenge the trial court's Order for Contempt and for Monetary

Sanctions entered against them and in favor of appellee, Jerilyn Lee Ackel. In two issues, the Ackels contend that the trial court erred in sanctioning them for not producing to Jerilyn Lee Ackel certain documents and "not giving full faith and credit to the injunctions of [the] state of Louisiana," which, they assert, prohibited them from producing the documents.

We dismiss the appeal.

## Background

In its January 6, 2011 Order for Contempt and for Monetary Sanctions, the trial court found that the Ackels had violated its prior orders compelling them to produce certain documents to Jerilyn Lee Acke and ordered the Ackels to "completely and fully respond" to Jerilyn Lee Ackel's discovery requests, including requests for production, requests for disclosure, and interrogatories, by January 10, 2011. The trial court also ordered the Ackels to pay $5,000 in attorney's fees and expenses to compensate Jerilyn Lee Ackel for filing her Motion to Show Cause for Contempt and for Monetary Sanctions. These sanctions were in addition to monetary sanctions that the trial court had previously imposed. In their notice of appeal, the Ackels appealed this order, and in their notice they contend that this appeal constitutes an accelerated, interlocutory appeal because the trial court's order "involv[es] [the trial court's failure] to enforce a TRO and preliminary injunction."

**Jurisdiction**

Jerilyn Lee Ackel has filed a motion to dismiss the appeal, noting that the Ackels are appealing an interlocutory discovery and monetary sanctions order, there has been no final judgment or order entered in the case, and there is no basis on which the Ackels can pursue an interlocutory appeal of the sanctions order. In response, the Ackels argue that this Court has jurisdiction over this appeal because the trial court effectively "denied the efficacy" of a Louisiana court's temporary restraining order and preliminary injunction, which, the Ackels assert, prohibit them from producing the documents that were sought by Jerilyn Lee Ackel. Quoting the Texas Civil Practice and Remedies Code, the Ackels note that a person may appeal from an interlocutory order that "grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction." TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(4) (Vernon 2008). The Ackels concede that the trial court did not "directly" grant or deny injunctive relief, but they assert that their appeal of the sanctions order falls within the scope of section 51.014(a)(4).

Generally, appeals may be taken only from final judgments. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). Interlocutory orders may be appealed only if permitted by statute. *Bally Total Fitness Corp. v. Jackson*, 53 S.W.3d 352, 352 (Tex. 2001). The Ackels' appeal does not constitute an appeal of

an order that "grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction" as contemplated by section 51.014(a)(4). The trial court's discovery and sanctions order is not one of the types of other enumerated orders that may be challenged by interlocutory appeal. *See id.* § 51.014. Moreover, the Ackels' factual assertions that they are prohibited from complying with a portion of the trial court's discovery and sanctions order as a result of orders entered by a Louisiana court are not supported by the record. Thus, there is no basis on which the Ackels may pursue an interlocutory appeal of the trial court's January 6, 2011 discovery and sanctions order. Accordingly, we hold that we lack jurisdiction over this appeal.

**Frivolous Appeal**

In a cross-point, Jerilyn Lee Ackel contends that the Ackels' appeal is frivolous and she requests that we award her "just damages" in the amount of $3,500. *See* TEX. R. APP. P. 45 (damages for frivolous appeals in civil cases). She asserts that it is "clear" that the trial court's discovery and sanctions order cannot be challenged with an interlocutory appeal, the Ackels' briefing is "woefully deficient, incoherently argued, and in abject non-compliance" with the Texas Rules of Appellate Procedure, and the Ackels' "full faith and credit argument" is "improperly briefed" and was "not raised in the trial court." She further asserts

that the "frivolous nature of this appeal" is "patent" and that "no reasonably informed lawyer" would have pursued it.

After considering the record, briefs, and other papers filed in this Court, we may award a prevailing party "just damages" if we objectively determine that an appeal is frivolous. TEX. R. APP. P. 45; *Smith v. Brown*, 51 S.W.3d 376, 381 (Tex. App.—Houston [1st Dist.] 2001, pet. denied). An appeal is frivolous when the record, viewed from the perspective of the advocate, does not provide reasonable grounds for the advocate to believe that the case could be reversed. *Smith*, 51 S.W.3d at 381. The decision to grant appellate sanctions is a matter of discretion that an appellate court exercises with prudence and caution and only after careful deliberation. *Id.*

Although we conclude that the Ackels' arguments ignore the plain language of section 51.014 and are misguided, we decline to impose sanctions under the circumstances presented.

## Conclusion

We dismiss this appeal for lack of jurisdiction.

Terry Jennings
Justice

Panel consists of Justices Jennings, Sharp, and Brown.