Dissenting opinion issued June 2, 2016.

In The

Court of Appeals

For The

First District of Texas

NO. 01-14-00687-CV

THE BETTER BUSINESS BUREAU OF METROPOLITAN HOUSTON, INC., THE BETTER BUSINESS BUREAU OF METROPOLITAN HOUSTON EDUCATION FOUNDATION, DAN PARSONS, CHRIS CHURCH, CHURCH ENTERPRISES, INC., GARY MILLESON, RONALD N. MCMILLAN, D'ARTAGNAN BEBEL, MARK GOLDIE, CHARLIE HOLLIS, AND STEVEN LUFBURROW, Appellants

V.

JOHN MOORE SERVICES, INC. AND JOHN MOORE RENOVATION, LLC, Appellees

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On Appeal from the 269th District Court
Harris County, Texas
Trial Court Case No. 2013-76215

DISSENTING OPINION

The trial court in this case *granted* the TCPA motion to dismiss. Our court now enters an appellate judgment of *reversal* in this interlocutory appeal, and concludes . . . the trial court should have *granted* the TCPA motion to dismiss.

In contrast to a flawed interpretation of the TCPA in *Direct Commercial Funding v. Beacon Hill Estates, LLC*, 407 S.W.3d 398 (Tex. App.—Houston [14th Dist.] 2013, no pet.), I would hold that the trial court appropriately exercised its plenary authority to revise interlocutory trial rulings when it granted the motion to dismiss. As a result, this interlocutory appeal which seeks the very same relief—a dismissal pursuant to the TCPA—is moot.

Because our court incorrectly exercises interlocutory appellate jurisdiction to reverse the interlocutory denial of the motion by operation of law—which the trial court already had reversed by revising the ruling—I respectfully dissent. The TCPA simply does not require this wasteful, duplicative, and time-consuming exercise.

I

The Texas Citizens Participation Act, TEX. CIV. PRAC. & REM. CODE §§ 27.001–.011 (TCPA), provides that if a trial court does not rule on a motion to dismiss within 30 days of the hearing, the motion is denied by operation of law. TEX. CIV. PRAC. & REM. CODE § 27.008(a). When that happens, the movant may appeal. *Id*. §§ 27.008(a), 51.014(a)(12). But the movant is not required to appeal, nor is it

required to appeal instantaneously. The movant has 20 days within which to file a notice of interlocutory appeal.[1] If the unsuccessful TCPA movant chooses to file a notice of interlocutory appeal, that action "stays the commencement of a trial in the trial court" and it "also stays all other proceedings in the trial court pending resolution of that appeal." *Id.* § 51.014(b). But the statutory stay of the trial court's plenary power does not apply unless or until the initiation of the interlocutory appeal. *See id.*

In this case, the trial court held a hearing on the Bureau's TCPA motion to dismiss on June 27, 2014. After hearing the arguments of counsel, the court advised the parties of its intention to read their voluminous filings, including the motion, responses, and objections related to the motion to dismiss. Alluding to the 30-day statutory deadline for a ruling, the trial judge stated:

> I will try and rule as fast as I can. I know there is a statutory deadline. I will do my very best. But I hope you will just indulge me that you understand I want to read everything and make sure I am making an informed decision, whichever way I go, and I'm not just, you know, flipping a coin or just trying to meet a deadline. So thank you for all of that.

The court did not rule before the 30-day statutory deadline, and the motion to dismiss was denied by operation of law on July 28, 2014. *See id.* § 27.008(a).

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[1] TEX. R. APP. P. 26.1(b). The TCPA previously permitted an appeal to be filed within 60 days of the ruling, but that provision was repealed effective June 14, 2013. Act of May 24, 2013, 83rd Leg., R.S. Ch. 1042, Sec. 5, 2013 Tex. Gen. Laws 2502.

Perhaps aware of the 20-day window to file a notice of appeal and the trial judge's comments about his desire to make an "informed decision," the Bureau did not file its notice of appeal the next day. It waited. And on August 11, 2014, the trial court ruled, granting the Bureau's motion to dismiss.

Despite prevailing on its motion, the Bureau nevertheless filed a notice of interlocutory appeal from the July 28 denial of its motion which had occurred by operation of law. Why? Under *Direct Commercial Funding*, a recent and possibly controlling authority from another intermediate appellate court with coterminous appellate jurisdiction over the district court,[2] the trial court's August 11 order may have been treated as a nullity because it was entered after the 30-day period specified

[2] The applicability of *Direct Commercial Funding*, which the Bureau contends was wrongly decided, was an unknown variable. Litigants in Harris County and the nine other counties that constitute the First and Fourteenth Judicial Districts do not know which appellate court will have jurisdiction over an appeal until after filing a notice of appeal. *See* TEX. GOV'T CODE § 22.202(h). The litigants in this appeal reasonably may have expected an appeal to be heard by the First Court of Appeals due to the assignment of a prior related appeal to this court, *see* 1st Tex. App. (Houston) Loc. R. 1.3(b), but they could not have known with certainty whether this court would adopt the Fourteenth Court's reasoning in *Direct Commercial Funding*. For a discussion of this peculiar feature of appellate jurisdiction over some Texas counties and some of its undesirable consequences, see generally Kem Thompson Frost, *Predictability in the Law, Prized Yet Not Promoted: A Study in Judicial Priorities*, 67 BAYLOR L. REV. 48 (2015).

by the TCPA. Out of an abundance of caution, the Bureau filed this interlocutory appeal from the earlier denial of its motion to dismiss by operation of law.[3]

II

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 authorized by statute. *Bally Total Fitness Corp. v. Jackson*, 53 S.W.3d 352, 352 (Tex. 2001). The Texas Civil Practice and Remedies Code authorizes an interlocutory appeal from an order that denies a TCPA motion to dismiss. *See* TEX. CIV. PRAC. & REM. CODE §§ 27.003, 51.014(a)(12). But "no statute expressly provides for interlocutory appeal of an order that grants such a motion." *Schlumberger Ltd. v. Rutherford*, 472 S.W.3d 881, 887 (Tex. App.—Houston [1st Dist.] 2015, no pet.).[4]

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[3] After the Bureau filed its notice of interlocutory appeal, the trial court signed an order staying further proceedings in the case. The court explained that its order granting the motion to dismiss was entered 14 days after the statutory deadline due to the volume of material the parties filed (a combined total of 1,601 pages) and a "busier-than-normal" month. The order detailed what the court was doing during the 30-day window for ruling on the motion to dismiss, including: (1) three jury trials; (2) a three-day bench trial; (3) 129 motions set for submission with or without oral hearing; and (4) 254 uncontested motions or requests. The court also noted that it was in trial for a total of 14 days and had no support in the form of a briefing attorney, law clerk, or associate judge.

[4] To the extent the court relies on a legislator's statement of intent for the proposition that the "legislative intent" of section 51.014(a)(12) of the Civil Practice and Remedies Code is "to provide for a right of interlocutory appeal

In this case, the motion to dismiss was denied by operation of law on July 28, but then it subsequently was granted by a written order signed on August 11. Under the statute, only the July 28 denial of the motion to dismiss is potentially reviewable by interlocutory appeal. *See* TEX. CIV. PRAC. & REM. CODE §§ 27.003, 51.014(a)(12); *Schlumberger*, 472 S.W.3d at 887. No party has attempted to appeal the August 11 order granting the motion to dismiss.

Our interlocutory jurisdiction hinges on what effect the August 11 order had on the July 28 denial by operation of law. If the trial court lacked the authority to enter the August 11 order,[5] then the July 28 denial of the motion to dismiss by operation of law continued to be appealable. *See* TEX. CIV. PRAC. & REM. CODE §§ 27.003, 51.014(a)(12). But if the trial court had power to enter the August 11 order granting the motion to dismiss, then the appealable order was effectively

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in all possible circumstances," this court has rejected the relevance of that particular artifact of legislative history in both *Paulsen v. Yarrell*, 455 S.W.3d 192, 196 (Tex. App.—Houston [1st Dist.] 2014, no pet.), and *Schlumberger Ltd. v. Rutherford*, 472 S.W.3d 881, 887–89 (Tex. App.—Houston [1st Dist.] 2015, no pet.).

5 *See, e.g.*, *Direct Commercial Funding, Inc. v. Beacon Hill Estates, LLC*, 407 S.W.3d 398, 401 (Tex. App.—Houston [14th Dist.] 2013, no pet.); *Dallas Morning News, Inc. v. Mapp*, No. 05-14-00848-CV, 2015 WL 3932868, at *3 (Tex. App.—Dallas June 26, 2015, no pet.); *see also Avila v. Larrea*, 394 S.W.3d 646, 656 (Tex. App.—Dallas 2012, pet. denied) (observing that "there is no provision for extension of the thirty-day period in section 27.005(a)," but not actually holding that a trial court is therefore powerless to rule after day 30).

nullified. *See Hernandez v. Ebrom*, 289 S.W.3d 316, 319 (Tex. 2009) ("Appeals of some interlocutory orders become moot because the orders have been rendered moot by subsequent orders."). Thus no interlocutory appeal would be permitted by law. *See Schlumberger*, 472 S.W.3d at 887. Accordingly, to resolve whether this court has jurisdiction over this appeal, we must determine the effect of the August 11, 2014 order.

A

In general, a trial court retains plenary power over its interlocutory orders until a final judgment is entered. *Fruehauf Corp. v. Carrillo*, 848 S.W.2d 83, 84 (Tex. 1993). "A trial court's plenary jurisdiction gives it not only the authority but the responsibility to review any pre-trial order upon proper motion." *In re Baylor Med. Ctr. at Garland*, 280 S.W.3d 227, 231 (Tex. 2008); *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241 (Tex. 1985). As such, a trial court has the inherent authority to change, modify, or set aside an interlocutory order at any time before the expiration of its plenary power. *See Fruehauf*, 848 S.W.2d at 84; *see also In re Burlington Coat Factory Warehouse of McAllen, Inc.*, 167 S.W.3d 827, 831 (Tex. 2005); *Fabio v. Ertel*, 226 S.W.3d 557, 562 (Tex. App.—Houston [1st Dist.] 2007, no pet.); *Lakota Res., Inc. v. Pathex Petroleum, Inc.*, No. 01-07-00369-CV, 2008 WL 3522253, at *2 (Tex. App.—Houston [1st Dist.] Aug. 14, 2008, no pet.) (mem. op.).

Fruehauf Corp. v. Carrillo, 848 S.W.2d 83 (Tex. 1993), posed a question of whether a court erred by granting a motion for new trial 74 days after the judgment, but vacating that order and denying the motion for new trial the following day. *Fruehauf*, 848 S.W.2d at 83–84. The Supreme Court held that the trial court acted properly because the granting of the motion for new trial extended the court's plenary power. *Id.* at 84. The Court stated:

> A trial court has plenary power over its judgment until it becomes final. *Mathes v. Kelton*, 569 S.W.2d 876, 878 (Tex. 1978); *Transamerican Leasing Co. v. Three Bears, Inc.*, 567 S.W.2d 799, 800 (Tex. 1978). The trial court also retains continuing control over interlocutory orders and has the power to set those orders aside any time before a final judgment is entered. *Texas Crushed Stone Co. v. Weeks*, 390 S.W.2d 846, 849 (Tex. Civ. App.—Austin 1965, writ ref'd n.r.e.). An order granting a new trial is an unappealable, interlocutory order. *B.F. Walker, Inc. v. Chaney*, 446 S.W.2d 896, 897 (Tex. Civ. App.—Amarillo 1969, writ ref'd n.r.e.). Denying the trial court the authority to reconsider its own order for new trial during the 75–day period *needlessly restricts the trial court, creates unnecessary litigation, and is inconsistent with the notion of inherent plenary power vested in the trial courts*.

Id. at 84 (emphasis supplied). Thus, because the trial court in *Fruehauf* retained plenary power, it did not act improperly by vacating its order granting a new trial. *Id.*

John Moore argues for the application of an exception to the general rule, relying on *Direct Commercial Funding* for its argument that the trial court lacked authority to grant the Bureau's motion to dismiss on August 11. In *Direct Commercial Funding*, the trial court granted the defendant's TCPA motion to

dismiss 72 days after the hearing on the motion. *Direct Commercial Funding*, 407 S.W.3d at 400. The Fourteenth Court of Appeals concluded that the text of the TCPA did not authorize a court to grant a motion to dismiss more than 30 days after the hearing. *Id.* at 401 (discussing TEX. CIV. PRAC. & REM. CODE §§ 27.003—.005). In reaching this conclusion, the court of appeals considered the language of the statute and provisions of the Texas Rules of Civil Procedure that it found analogous. *Id.* at 402.

The TCPA provides that a party may file a motion to dismiss a legal action which is "based on, relates to, or is in response to a party's exercise of the right of free speech, right to petition, or right of association." TEX. CIV. PRAC. & REM. CODE § 27.003(a). Although such a motion "must be filed" within 60 days of service of the legal action, the statute expressly authorizes a trial court to "extend the time to file a motion" to dismiss "on a showing of good cause." *Id.* § 27.003(b). In a similar way, the TCPA requires a hearing on the motion to dismiss to be set within 60 days of service of the motion, but the statute expressly authorizes an extension of up to 90 days from service of the motion due to docket conditions of the court, a showing of good cause, or agreement of the parties. *Id.* § 27.004(a). The statute also expressly authorizes an extension of time for the hearing of up to 120 days from service of the motion if discovery is necessary. *Id.* § 27.004(c).

A trial court is required to rule on a TCPA motion to dismiss within 30 days from the date of hearing on the motion. *Id.* § 27.005(a). Unlike the provisions addressing the time for filing the motion or holding a hearing, the provision addressing the court's ruling on a motion to dismiss does not expressly authorize a trial court to extend the time for ruling on a motion to dismiss. *Id.*

Considering these statutory provisions together, the Fourteenth Court concluded that in enacting the TCPA, the Legislature deliberately distinguished between "extendable deadlines" and "firm deadlines." *Direct Commercial Funding*, 407 S.W.3d at 401. The court stated:

> The distinction drawn by the legislature between extendable deadlines and firm deadlines—and more particularly, the mandatory deadline that applies to the trial court's authority to rule on a motion to dismiss—would be meaningless if the trial court, acting sua sponte, could reverse the consequences imposed by statute for failure to timely act.

Id.

The *Direct Commercial Funding* opinion also drew analogies from Rules 165a and 329b of the Texas Rules of Civil Procedure, which specifically allow a court to grant a motion to reinstate a case that has been dismissed for want of prosecution, a motion for new trial, or a motion to vacate, modify, correct, or reform a judgment after such motions have been denied by operation of law. *Id.* at 402 (discussing TEX. R. CIV. P. 165a & 329b). The court compared the TCPA to Rules 165a and 329b, and it observed: "Unlike these procedural rules, the Citizens

Participation Act contains no analogous provision empowering the trial court to grant a motion to dismiss after it has been overruled by operation of law." *Id.* Thus, because the TCPA does not expressly authorize a court to grant a motion to dismiss more than 30 days after the hearing, the Fourteenth Court of Appeals held that the trial court was "not authorized to grant a motion to dismiss under the Act more than 30 days after the hearing on the motion." *Id.*

I respectfully disagree with the statutory analysis in *Direct Commercial Funding*. Section 27.005 pertains to a ruling on a motion to dismiss, and it provides in relevant part that the court "must rule" within 30 days of the hearing and that the court "shall dismiss" a legal action when the movant meets his burden and the nonmovant fails to meet his burden. *See* TEX. CIV. PRAC. & REM. CODE §27.005. When used in statutes, both "shall" and "must" are ordinarily construed as creating mandatory obligations. *Tex. Dept. of Pub. Safety v. Shaikh*, 445 S.W.3d 183, 187 (Tex. App.—Houston [1st Dist.] 2013, no pet.) (citing *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001)).

But "mandatory statutory duties are not necessarily jurisdictional." *Crosstex Energy Services, L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 391 (Tex. 2014) (citing *Helena Chem.*, 47 S.W.3d at 494). "We resist classifying a provision as jurisdictional absent clear legislative intent to that effect." *Id.* In the absence of an express statutory deprivation of the trial court's power to rule, I would not interpret the directive that

the trial court "must rule" within 30 days as a deprivation of the trial court's jurisdiction to revise the ruling later. The plain text of the TCPA is sufficient to resolve this question. The statute does not purport to alter the general rule that a trial court retains plenary power over interlocutory orders until the entry of final judgment.[6] There are statutory consequences for failure to rule within 30 days, but they do not include a jurisdictional bar. The statute simply provides: "the motion is considered to have been denied by operation of law and the moving party may appeal." TEX. CIV. PRAC. & REM. CODE § 27.008(a). These specific consequences are not incompatible with the general rule that a trial court retains power to revise its interlocutory rulings.[7]

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[6] *See Fruehauf*, 848 S.W.2d at 84. When the *Direct Commercial Funding* court examined the statute, it noted the absence of any provision specifically authorizing the court to grant a motion to dismiss more than 30 days after the hearing and concluded that the court was not authorized to do so. *Direct Commercial Funding*, 407 S.W.3d at 402. My analysis reaches the opposite conclusion. No provision specifies that the 30-day deadline for ruling on a motion to dismiss deprives the court of any power it otherwise would have following entry of an interlocutory order. *Cf. In re Brehmer*, 428 S.W.3d 920, 921 (Tex. App.—Fort Worth 2014, orig. proceeding). I would not read additional terms into the statute that are absent from what was enacted by the Legislature in order to create a jurisdictional bar. *See Laidlaw Waste Sys. (Dallas), Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex. 1995).

[7] To the extent it matters, *see Crosstex Energy Services, L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 392 (Tex. 2014), a jurisdictional bar does not advance the enacted statement of the TCPA's purpose, "to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law

I would hold that the requirement that the court rule on a TCPA motion to dismiss within 30 days of the hearing is not jurisdictional. The denial of the Bureau's motion to dismiss was an interlocutory order, subject to the ongoing control and continuing plenary power of the trial court. *See Fruehauf*, 848 S.W.2d at 84. As such, I would hold that the court retained jurisdiction to enter an order granting the Bureau's motion so long as its plenary power continued.

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and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury." TEX. CIV. PRAC. & REM. CODE § 27.002. Instead of facilitating a prompt dismissal, treating the 30-day deadline as jurisdictional only forces the parties into an unnecessary ancillary track of interlocutory appellate litigation like the one before us. *Cf. Fruehauf*, 848 S.W.2d at 84 (avoiding needless restriction on the trial court which would create unnecessary litigation and be inconsistent with the notion of inherent plenary power vested in the trial courts). Instead of allowing the trial court to correct its own error by dismissing the case before the movant invokes the right of appeal and associated stay of proceedings (which efficiently can be accomplished by a one-line order granting the motion), such an interpretation forces the parties to relitigate the issue before an appellate court, which is obliged to write a full-blown opinion explaining its reasoning. *See* TEX. R. APP. P. 47.1. In the event of a reversal, all that is accomplished is that the trial court is compelled to do something it otherwise could have done on its own much more efficiently, as the trial court in this case attempted to do. Nothing in the TCPA suggests the Legislature intended to require such an inefficient process. As such, neither judicial economy nor the purpose of the statute are served by reading into the statute an exception to the general rule of continuing plenary power over interlocutory orders.

B

In reaching the opposite conclusion, this court accepts the *Direct Commercial Funding* rule as a given, despite the fact that the Bureau argues the case was incorrectly decided, and our interlocutory appellate jurisdiction hinges on it.[8] Rather than directly addressing this unsettled legal issue and its jurisdictional consequence of mootness, the court merges two distinct facets of Appellate Rule 29 to justify the exercise of appellate jurisdiction. The court observes that "Rule 29.5 provides that a trial court's further orders may not 'interfere[] with or impair[] the jurisdiction of the appellate court or effectiveness of any relief sought or that may be granted on appeal,'" TEX. R. APP. P. 29.5(b), and also that "when a trial court makes further orders, we may review (1) 'a further appealable interlocutory order concerning the same subject matter' as the order on appeal; and (2) 'any interlocutory order that interferes with or impairs the effectiveness of the relief sought or that may be granted on appeal.'" TEX. R. APP. P. 29.6(a). Simply put, these provisions of Rule 29 have no application to this case or to TCPA appeals in general.

Rule 29.5 ("Further Proceedings in Trial Court") applies to permit "further" interlocutory trial court orders to be made "[w]hile an appeal from an interlocutory

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[8] *See Hernandez v. Ebrom*, 289 S.W.3d 316, 319 (Tex. 2009) ("Appeals of some interlocutory orders become moot because the orders have been rendered moot by subsequent orders."); *State Bar of Texas v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994) ("Subject matter jurisdiction requires . . . that there be a live controversy between the parties . . . .").

order is pending . . . unless prohibited by statute." TEX. R. APP. P. 29.5. In the case of TCPA interlocutory appeals, such further orders are prohibited by statute. TEX. CIV. PRAC. & REM. CODE § 51.014(b). Thus the scope of Rule 29.5 does not include the August 11 order, which was issued when no interlocutory appeal was pending.[9] I have no disagreement with the court's observation that Rule 29.5 "protects against any party's forfeiture of its appellate rights due to later events in the trial court," except to note that the rule is inapplicable to this appeal by its own terms, because the August 11 order was not a "later event in the trial court" with respect to this appeal—it was a *prior* event in the trial court which properly factors into our evaluation of whether the interlocutory appeal was moot on arrival. As such, the August 11 order cannot be considered to violate Rule 29.5(b)'s prohibition against "further orders" interfering with or impairing our appellate jurisdiction. *See* TEX. R. APP. P. 29.5(b).

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[9] This procedural fact distinguishes the case of *Dallas Morning News, Inc. v. Mapp*, No. 05-14-00848-CV, 2015 WL 3932868 (Tex. App.—Dallas June 26, 2015, no pet.), in which a TCPA motion to dismiss was denied by operation of law, the movant filed notice of an interlocutory appeal, and the trial court subsequently purported to enter a final judgment dismissing the case pursuant to the TCPA. The court of appeals in that case found Rule 29.5 to be inapplicable, but for a different reason—that under the reasoning of *Direct Commercial Funding*, "the trial judge took an act prohibited by statute when she signed an order outside the statutorily mandated time period." 2015 WL 3932868 at *3. For the reasons discussed above, I disagree with this interpretation of the TCPA.

The other provision, Rule 29.6 ("Review of Further Orders") permits interlocutory review of two categories of interlocutory trial court orders ancillary to one that has been appealed. First, we may review "a further appealable interlocutory order concerning the same subject matter." TEX. R. APP. P. 29.6(a)(1). That category is inapplicable to this appeal because an order granting a TCPA motion to dismiss, such as the August 11 order, is not an "appealable interlocutory order." *Schlumberger*, 472 S.W.3d at 887. Second, we may review "any interlocutory order that interferes with or impairs the effectiveness of the relief sought or that may be granted on appeal." TEX. R. APP. P. 29.6(a)(2). This is the category the court appears to invoke by its reasoning that the Bureau "could not obtain all of the appellate relief it seeks by merely relying on the later order" which "is subject to challenge for procedural default." But the court does not actually rely on Rule 29.6(a)(2) to justify exercising jurisdiction over a "further order," as it concedes the August 11 order "is not itself reviewable on interlocutory appeal."

Instead of exercising any power under Rules 29.5 or 29.6, the real crux of the court's reasoning is its assertion that the August 11 order should not be considered to "divest our court of its jurisdiction" over reviewing the denial of the motion to dismiss by operation of law. However, the Supreme Court already has acknowledged that an interlocutory appeal may be mooted by a subsequent order. *See Hernandez*, 289 S.W.3d at 319. That is what has happened in this appeal. After the trial court in

this case entered its order granting the TCPA motion to dismiss, the Bureau did not want or need this interlocutory appeal.[10] The Bureau already had obtained the relief it sought: dismissal. The same logic would apply to any other case in which a TCPA motion to dismiss is denied by operation of law, and the trial court enters an order granting the motion before the movant forecloses that possibility by filing a notice of interlocutory appeal. Because the movant in such circumstances obtains the relief it requested, and because only an unsuccessful TCPA movant has the right to an interlocutory appeal, there is nothing more to be accomplished by an interlocutory appeal.

Finally, to the extent the relief requested in this particular appeal encompasses a resolution of the Bureau's procedural quandary stemming from the holding of *Direct Commercial Funding*, that issue is fully resolved by the analysis necessary to dismiss the appeal, which explains why the trial court maintained plenary power to enter the order granting the TCPA motion to dismiss. Thus stretching our appellate

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[10] The Bureau stated in its statement of jurisdiction that it "had no choice but to file this interlocutory appeal based on the Fourteenth Court of Appeals' decision in *Direct Commercial Funding v. Beacon Hill Estates, LLC*, 407 S.W.3d 398, 401 (Tex. App.—Houston [14th Dist.] 2013, no pet.)." Appellants' Brief at xiii. The Bureau nevertheless stated that "the *Direct Commercial* decision was incorrectly decided," and that "a trial court has continuing jurisdiction to grant a motion to dismiss beyond the 30-day period." *Id.*

jurisdiction to engage in a merits review of the denial of the TCPA motion to dismiss by operation of law is not necessary to provide the Bureau its full measure of relief. And given the constitutional underpinnings of the mootness doctrine,[11] I question whether the rules of procedure ever could justify exercising our legislatively defined interlocutory appellate jurisdiction when there is no live controversy.

In sum, the provisions of Rule 29.5 and 29.6 do not compel us to resolve an interlocutory appeal from an order rendered moot by subsequent events, nor do they justify our doing so.

*** * ***

The trial court's August 11 order set aside the July 28 denial of the Bureau's motion to dismiss. It therefore rendered moot an appeal from the denial of the Bureau's motion. *See Hernandez*, 289 S.W.3d at 319. The appeal is moot because the Bureau already obtained the relief sought from the appeal. *See, e.g.*, *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 162 (Tex. 2012). The only argument that the appeal is not moot is predicated on the mistaken view that a trial judge lacks plenary authority to revise an interlocutory ruling denying a TCPA motion to dismiss prior to the filing of a notice of interlocutory appeal and its attendant statutory stay of all

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[11] *Speer v. Presbyterian Children's Home & Serv. Agency*, 847 S.W.2d 227, 229 (Tex. 1993) (citing TEX. CONST. art. II, § 1).

trial proceedings pending the appeal. But for the Fourteenth Court's adoption of that rule, this appeal never would have been filed.

Our "duty to dismiss moot cases arises from a proper respect for the judicial branch's unique role under our constitution: to decide contested cases. Under our constitution, courts simply have no jurisdiction to render advisory opinions." *Speer v. Presbyterian Children's Home & Serv. Agency*, 847 S.W.2d 227, 229 (Tex. 1993) (citing TEX. CONST. art. II, § 1). I would dismiss this anomalous appeal for want of jurisdiction. Because the court does not, I respectfully dissent.

Michael Massengale
Justice

Panel consists of Justices Keyes, Bland, and Massengale.

Justice Massengale, dissenting.