Opinion issued May 3, 2016

In The

Court of Appeals

For The

First District of Texas

NO. 01-16-00153-CV

MARTA RAMIREZ, AS PERSONAL REPRESENTATIVE AND HEIR OF RONALD MONROY, DECEASED, Appellant

V.

J & R EXPRESS, LLC AND NOBLE ENERGY, INC., Appellees

On Appeal from the 215th District Court
Harris County, Texas
Trial Court Case Nos. 2015-43210

MEMORANDUM OPINION

On February 23, 2016, appellant, Marta Ramirez ("Ramirez"), as personal representative and heir of Ronald Monroy, Deceased, filed a notice of appeal from the trial court's January 8, 2016 order granting the motion for partial summary judgment, and the February 1, 2016 order denying withdrawal of admissions in trial

court cause number 2015-43210. The Clerk of this Court assigned the appeal from trial court cause number 2015-43210 to appellate cause number 01-16-00153-CV.

Also on February 23, 2016, appellant filed an identical notice of appeal from the same January 8, 2016 trial court's order granting the motion for partial summary judgment filed by appellee, Noble Energy, Inc. ("Noble"), and the February 1, 2016 order denying withdrawal of admissions. Ramirez claims that these orders were made final by the trial court's order granting Noble's motion to sever, signed on February 8, 2016, which severed all claims against Noble into trial court cause number 2015-43210-A. Ramirez's second notice of appeal was from severed trial court cause number 2015-43210-A and the Clerk of this Court assigned it to appellate cause number 01-16-00155-CV.

On April 8, 2016, Ramirez filed this opposed motion to consolidate the appeals and to dismiss the appeal as to J & R Express, LLC ("J & R"). Ramirez contends that she only desired to appeal the judgment in favor of Noble and filed a notice of appeal in both trial court cause numbers "out of an abundance of caution" because the "trial court's severance order was not clear as to whether" Noble would be the defendant in 2015-43210 and J & R the defendant in 2015-43210-A, or vice versa. Then Ramirez claims that, "[a]s a result," the trial clerk "opened an appeal in both case 2015-43210 and 2015-43210[-]A, and the Clerk of this Court assigned separate case numbers to what is actually one case." Thus, "to avoid constant

duplicate filings, [Ramirez] asks the Court to consolidate the two appeals into one case number" and requests that the J & R appeal in 01-16-00153-CV should be dismissed because there is no final judgment against J & R.

On April 13, 2016, appellee Noble filed a motion to dismiss appeal and response in opposition to Ramirez's motion to consolidate appeals. Although Noble agrees with Ramirez's motion to dismiss the J & R appeal in 01-16-00153-CV, because there is no final judgment as to J & R from the trial court's January 8, 2016 order in trial court case number 2015-43210, Noble contends that once this Court dismisses the J & R appeal, Ramirez's motion to consolidate will become moot. Ramirez filed a reply agreeing with dismissing 01-16-00153-CV.[1] We agree with Noble, grant Noble's motion to dismiss the first appeal in 01-16-00153-CV from trial court cause number 2015-43210 involving J & R, and dismiss Ramirez's motion to consolidate and dismiss appeals as moot.

Generally, this Court has civil appellate jurisdiction over final judgments or interlocutory orders specifically authorized as appealable by statute. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 51.012, 51.014(a)(1)–(12) (West Supp. 2015); *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). "A judgment is final 'if and only if either it actually disposes of all claims and parties then before the

[1] Because Ramirez requests new relief in her reply, she is directed to file a separate motion in 01-16-00155-CV.

court, regardless of its language, or it states with unmistakable clarity that it is a final judgment as to all claims and all parties.'" *In re Vaishangi, Inc.*, 442 S.W.3d 256, 259 (Tex. 2014) (quoting, *inter alia*, *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 192-93 (Tex. 2001)). The trial court's January 8, 2016 order granting the motion for partial summary judgment was not a final judgment as to Noble or J & R because it explicitly stated that it was a partial summary judgment that did not dispose of all claims and all parties and was not appealable. *See id.*; *see also Lehmann*, 39 S.W.3d at 192–93, 206.

In contrast, after the trial court signed a separate order on February 8, 2016, granting Noble's motion to sever all claims into trial court cause number 2015-43210-A, that made the January 8, 2016 order granting the partial summary judgment final as to all of Ramirez's claims against Noble, but not as to J & R. *See Diversified Fin. Sys., Inc. v. Hill, Heard, O'Neal, Gilstrap & Goetz, P.C.*, 63 S.W.3d 795, 795 (Tex. 2001) (per curiam) ("As a rule, the severance of an interlocutory judgment into a separate cause makes it final.") (citation omitted). No other party has filed a notice of appeal and no opinion has issued regarding the January 8, 2016 partial summary judgment. *See* TEX. R. APP. P. 42.1(a)(1), (c). Although Ramirez has filed a second notice of appeal, which was assigned to appellate cause number 01-16-00155-CV, that appeal is from the February 8, 2016 order granting Noble's

motion to sever, which made the partial summary judgment final as to Noble, but not as to J & R.

CONCLUSION

Accordingly, we grant Noble's motion, and dismiss the first appeal for want of jurisdiction under appellate cause number 01-16-00153-CV involving J & R, and dismiss Ramirez's motion to consolidate and dismiss appeals as moot. *See* TEX. R. APP. P. 42.3(a), 43.2(f).

PER CURIAM

Panel consists of Chief Justice Radack and Justices Keyes and Higley.