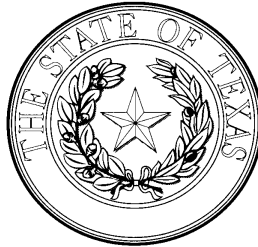


Opinion issued May 22, 2018.



**In The
Court of Appeals
For The
First District of Texas**

NO. 01-17-00577-CV

**MICHELLE LYNNE KUZMIAK, Appellant
V.
JASON WILLIAM KUZMIAK, Appellee**

**On Appeal from the 300th District Court
Brazoria County, Texas
Trial Court Case No. 84260-F**

MEMORANDUM OPINION

Appellant, Michelle Lynne Kuzmiak, is attempting to appeal from the trial court's July 12, 2017 order granting the no-evidence summary judgment of appellee, Jason William Kuzmiak. We dismiss the appeal for want of jurisdiction.

Appellant and Appellee were divorced on March 24, 2016, and the trial court issued an amended agreed final decree of divorce on April 4, 2016. On December 1, 2016, appellant filed a motion for amendment of judgment nunc pro tunc based on alleged clerical error in the court's April decree. The trial court determined that the requested change was substantive, not clerical, and denied appellant's motion for judgment nunc pro tunc on December 8, 2016.

After her motion for judgment nunc pro tunc was denied, appellant filed a separate suit against appellee on December 16, 2016, asserting causes of action for fraud, breach of contract, promissory estoppel, and unjust enrichment.¹ On January 17, 2017, appellee filed a petition for the return of his separate property. At the parties' request, the trial court signed an order on January 25, 2017, consolidating appellant's civil suit and the divorce proceeding.

On April 4, 2017, appellee filed a no-evidence summary judgment on appellant's breach of contract, promissory estoppel, unjust enrichment and common law fraud claims in the consolidated case and set a hearing on his motion for April 27, 2017. After appellant did not file a response to the motion or appear for the hearing, the trial court granted appellee's no-evidence summary judgment motion and dismissed all of appellant's causes of action on April 28, 2017.

¹ Appellant also asserted claims for breach of contract, promissory estoppel, and unjust enrichment. Appellant is not appealing the trial court's grant of appellee's no-evidence summary judgment motion on these claims.

Appellant timely filed a motion for reconsideration, asking the court to set aside its default summary judgment and grant appellant a new trial. Appellant's motion included her response to appellee's no-evidence summary judgment motion and she attached her affidavit.

During a hearing on appellant's motion, the trial court set aside its default summary judgment and granted appellant a new trial. The court then immediately granted appellee's no-evidence motion. The trial court signed orders on July 12, 2017, memorializing its rulings.

On July 17, 2017, appellant filed a notice of appeal from the trial court's July 12, 2017 order granting summary judgment.

On April 18, 2018, the Clerk of this Court notified appellant that the record on appeal indicated that the trial court's summary judgment order did not dispose of all parties and claims, specifically appellee's "Petition for Return of Separate Property." The Clerk further notified the parties that the Court might dismiss the appeal unless appellant filed a supplemental clerk's record showing that all claims had been resolved or a response demonstrating that the Court has jurisdiction over this appeal. Appellant has not responded.

Generally, appellate courts have jurisdiction only over appeals from final judgments. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001); *N.E. Indep. Sch. Dist. v. Aldridge*, 400 S.W.2d 893, 895 (Tex. 1966). To be final, a

judgment must dispose of all issues and parties in a case. *Aldridge*, 400 S.W.2d at 895. And, when there has been no traditional trial on the merits, no presumption arises regarding the finality of a judgment. *Crites v. Collins*, 284 S.W.3d 839, 840 (Tex. 2009) (citing *Lehmann*, 39 S.W.3d at 199–200). A summary judgment order is final for purposes of appeal only if the order “actually disposes of all claims and parties then before the court . . . or it states with unmistakable clarity that it is a final judgment as to all claims and all parties.” *Lehmann*, 39 S.W.3d at 192–93; *see Duke v. Am. W. Steel, LLC*, 526 S.W.3d 814, 816 (Tex. App.—Houston [1st Dist.] 2017, no pet.).

Here, the July 12, 2017 summary judgment order specifically only disposes of appellee’s motion for summary judgment. The order “does not unequivocally express an intent to dispose of all claims and all parties.” *Crites*, 284 S.W.3d 841. Because the November 21, 2016 order does not dispose of all parties and all claims in the trial court proceeding, we conclude that the order is not final and appealable. We dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a), 43.2(f).

PER CURIAM

Panel consists of Justices Bland, Lloyd, and Caughey.